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Published Bi-monthly by

THE AMERICAN POLITICAL SCIENCE ASSOCIATION

Publication Office, 450–458 Ahnaip St., Menasha, Wis.

Editorial Office
200 South Hall
University of Wisconsin
Madison, Wisconsin

Secretary of the Association
305 Harris Hall
Northwestern University
Evanston, Illinois

Foreign Agents, P. S. King and Son, Ltd., Great Smith St., Westminster, London

Entered as second class matter at the post office at Menasha, Wis., under the Act of August 4, 1912.
Acceptance for mailing at special rate of postage provided for in Section 1103,
Act of October 3, 1917, authorized May 12, 1926.

Made in the United States of America

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THE AMERICAN POLITICAL SCIENCE REVIEW, published bi-monthly, is supplied to all members of the American Political Science Association. The annual dues are $5.00 a year ($3.00 for graduate and undergraduate students in colleges and universities).

Single numbers of the REVIEW are sold as follows: Vols. I-VIII, $1.50 each; Vols. IX-XXV (1915–31), $1.25 each; Vol. XXVI (1932) and following, $1.00 each.

Applications for membership, orders for the REVIEW, and remittances should be addressed to 450–458 Ahnaip St., Menasha, Wis., or to Kenneth Colegrove, 305 Harris Hall, Northwestern University, Evanston, Illinois.

Correspondence concerning contributions to the REVIEW—likewise books submitted for review—should be addressed to Frederic A. Ogg, Managing Editor, 209 South Hall, University of Wisconsin, Madison, Wis.

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The American Political Science Review

VOL. XXXI OCTOBER, 1937 NO. 5

ECONOMIC PREDILECTION AND THE LAW

SAMUEL HERMAN
Washington, D.C.

I

As 1937 brings into sharp focus the New Deal critique of the judiciary, the phrase "economic predilection" becomes a slogan rather than a subtle juristic evaluation. The famed dictum of Justice Holmes that there is an inarticulate major premise upon which major constitutional issues are decided[1] was necessarily made an issue in government by an Administration whose program is primarily economic. An Administration dedicated to war as governmental policy might similarly inveigh against "pacifistic propensity" in the judiciary. In the midst of the heat and controversy as to whether the integrity of the judiciary is impaired by a charge that judges adjudicate constitutional issues upon the basis of "economic predilection," it seems desirable to inquire into the possibility of formulating a disciplined judicial economics, to the end that there may be a realistic, tempered instrument for solving the major judicial questions of our time. The more sensitive jurists have expatiated upon the intuitive and subconscious aspects of judicial decision, but beyond stating that such factors exist they have, on the whole, continued to articulate their judicial reasonings in conventional legalistic form.[2] Legal tradition is usually successful in throwing the balance in favor of the seeming where the seeming and the actual are in conflict. What exceptions there have been have been of inestimable benefit to the law. They have brought wisdom, beauty, and strength to an ancient, oft-times sadly threadbare, technique. An example is the approach to law exemplified by the method of Mr. Brandeis both as advocate and justice.

[1] "The decision will depend on a judgment or intuition more subtle than any articulate major premise." Lochner v. New York, 198 U.S. 45, 76 (1904).

[2] Cf. Cardozo, *The Nature of the Judicial Process* (New Haven, 1921).

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The brief filed by Mr. Brandeis while attorney for the state of Oregon in Muller v. Oregon[3] is by now legendary. His mild citations to social and economic material represented a startling innovation. Mr. Felix Frankfurter, an astute commentator upon, and careful student of, the workings of the Court, referring to the Muller v. Oregon brief, said:

> By a series of arguments and briefs he [Justice Brandeis] created a new technique in the presentation of constitutional questions. Until his famous brief in Muller v. Oregon, social legislation was supported by the courts largely *in vacuo*, as an abstract dialectic between "liberty" and "police power," unrelated to a world of trusts and unions, of large scale industry and all its implications. In the Oregon case, the facts of modern industry which provoke regulatory legislation were, for the first time, adequately marshaled before the court. It marks an epoch in the disposition of cases presenting the most important present day constitutional issues.[4]

The constitutional issue presented in Muller v. Oregon was whether an enactment by a state legislature providing for a maximum ten-hour day for women employed in laundries was constitutional under the due process clause of the federal Constitution. The Brandeis brief,[5] prepared in 1907, seems to be a precursor, not only

[3] 208 U.S. 412 (1907).

[4] "Mr. Justice Brandeis and the Constitution," in *Mr. Justice Brandeis* (New Haven, 1932), p. 52.

[5] A reading in 1937 of the brief filed by Mr. Brandeis as counsel for the defendant in error (October term, 1907, No. 107) shows a simple but highly lucid analysis of the effects of hours of labor which to present-day economists and sociologists would appear to be a conventional approach. The first part of this 113-page document reviews American and foreign legislation restricting the hours of labor for women. The second part of the brief has seven major heads and is outlined as follows:

I. The Danger of Long Hours
  A. Causes
    (1) Physical Differences Between Men and Women
    (2) The New Strain in Manufacture
  B. Bad Effect of Long Hours on Health
    (1) General Injuries from Long Hours
    (2) Specific Evil Effects on Child-birth and Female Functions
  C. Bad Effect of Long Hours on Safety
  D. Bad Effect of Long Hours on Morals
  E. Bad Effect of Long Hours on General Welfare
    (1) State's Need of Protecting Women
    (2) The Effect of Women's Overwork on Future Generations
II. Shorter Hours the Only Possible Protection
III. The General Benefits of Short Hours
  A. Good Effect on the Individual Health, Home Life, etc.
  B. Good Effect on the General Welfare
IV. Economic Aspect of Short Hours
  A. Effect on Output

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of a series of recent argumentations before the Supreme Court of a more advanced economic nature, but also of the social science method, which, in the years subsequent to 1907, was emphasized so sharply by various major universities of the country.

In the thirty years that have elapsed since the Brandeis brief, the Supreme Court has been faced progressively with constitutional questions of a predominantly economic nature. Whatever the foundation of the "economic predilection" of the justices may be, an examination of the opinions in the leading cases decided by the Court since the World War, and particularly of the briefs and records therein, shows unmistakably that the Court has had presented to it, in a framework of legal concepts and legal terminology, to be sure, complex economic questions. It is apparent that the Court, as a judicial tribunal, has not simply utilized economic predilections haphazardly as points of departure for the solution of mere legal problems—it has been legally compelled to consider economic questions. And if, as is highly probable, the function of the Court as final arbiter of economic and social legislation is preserved, the coming years will find the Court faced with increasing frequency by economic questions of a gravity and importance quite beyond the range of traditional judicial review. In the present state of the law, these economic questions will of necessity be determined by judges upon the basis of "economic predilection," be

(1) Shorter Hours Increase Efficiency and this Prevents Reduction of Output
(2) Long Hours Result in Inferior Quality of Product
B. Effect on Regularity of Employment
C. Adaptation of Customers to Shorter Hours
D. Incentive to Improvement in Manufacture
E. Effect on Scope of Women's Employment
V. Uniformity of Restriction
A. Allowance of Overtime Dangerous to Health
B. Uniformity Essential for Purposes of Investment
C. Uniformity Essential to Justice to Employers
VI. The Reasonableness of the Ten Hour Day
A. Opinions of Physicians and Officials
B. Opinions of Employees
C. Opinions of Employers
VII. Laundries
A. Present Character of the Business
B. Bad Effect upon Health
C. Bad Effect upon Safety
D. Bad Effect upon Morals
E. Irregularity of Work

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that predilection of the sort favored by the Administration of the day or not. Consequently, it is of paramount importance to determine whether or not the vague intuitive "predilection" by which the judges decide economic issues (while phrasing their decisions in legal terminology), should not, by the establishment of an overt discipline of law and economics, be tested by the dictates of reason, rather than by the psychological *indicia* implicit in purely legalistic reasoning.

Particularly in the last decade has it become apparent that in the more important cases before the Supreme Court the actual issues have been economic. Records and briefs filed before the Court have been heavily couched in economic phraseology, have utilized economic approaches, and have presented data differing in little respect from the data studied by academic economists. If students of jurisprudence still seriously entertain preconceptions that the Court functions smoothly in a tight little legalistic world, and has at its disposal a complete and adequate set of ideational tools and facilities, they may well refer to Carter v. Carter Coal Co.[6] The records and briefs by the Petitioner, the Government, and the *Amici Curiae* are more treatises in economic policy than exposition of legal principle. They differ but slightly from, and in fact incorporate, normal economic research upon the bituminous coal industry. An object lesson in how detailed and technical the economic problems are, as presented to the Court, is to be found in examining the 289-page brief for the Petitioner (No. 636, October term, 1935), the 326-page brief for the Government Officers (Nos. 636, 651), and the briefs of the United Mine Workers of America (No. 631), the state of Indiana (No. 636), and the Non-Code Producers (No. 636). The transcript of the record could serve any instructor in political economy as a text upon the life and death of an industry.

Nor is Carter v. Carter Coal Co. an anomalous case. The method pursued by the Brandeis brief in Muller v. Oregon is improved upon in a long series of characteristic cases both preceding and antedating Carter v. Carter Coal Company. If the records, briefs, and opinions in the following cases are examined and contrasted, a new understanding of the work of the Court and, implicitly, a new attitude toward jurisprudence, must emerge: New State Ice Company v. Liebmann (state regulation of the manufacture, sale, and distri-

[6] 298 U.S. 238 (1935).

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bution of ice);[7] Nebbia v. New York (state fixing of minimum and maximum retail price of milk);[8] Home Building and Loan Association v. Blaisdell (state mortgage moratorium);[9] Panama Refining Company v. Ryan (federal oil regulation);[10] Schechter Poultry Corporation v. United States (validity of National Industrial Recovery Act);[11] Local 167 v. United States (violation of Sherman Act through combination in restraint of interstate commerce);[12] Railroad Retirement Board v. Alton Railroad Company (validity of Railroad Retirement Act);[13] United States v. Butler (validity of Agricultural Adjustment Act);[14] Gold Clause Cases (abrogation of gold clause stipulation in private contracts; acceptance of legal tender currency by gold certificate holders; abrogation of gold clause in government obligations);[15] Ashton v. Cameron County Water Improvement District No. One (validity of Municipal Bankruptcy Act);[16] Sugar Institute v. United States (unreasonable restraint of trade under the Sherman Act);[17] Morehead v. Tipaldo (state minimum wage law for women and minors);[18] United States v. Constantine (tax on liquor-dealers violating state law);[19] United States v. E. J. & E. Railway Company (violation of commodities clause of the Interstate Commerce Act);[20] Colgate v. Harvey (state franchise tax statute);[21] McCandless v. Furlaud (liability of stock promoters);[22] Ashwander v. Tennessee Valley Authority (right of the federal government to acquire transmission lines and power facilities and to dispose of power);[23] Hopkins Savings Assn. v. Cleary (conversion of state savings and loan associations into federal);[24] West v. C. & P. Tel. Co. of Baltimore (valuation of property of a public utility for rate-making purposes);[25] St. Joseph Stockyards Co. v. United States (judicial review of rate-making);[26] Borden's Co. v Ten Eyck (resale differential in state regulation of the price of milk);[27] Mayflower Farms v. Ten Eyck (classification in state regulation of the sale of milk);[28] Jones v. Securities and

[7] 285 U.S. 262 (1932).
[8] 291 U.S. 502 (1933).
[9] 290 U.S. 398 (1933).
[10] 293 U.S. 388 (1934).
[11] 295 U.S. 495 (1934).
[12] 291 U.S. 293 (1933).
[13] 295 U.S. 330 (1934).
[14] 297 U.S. 1 (1935).
[15] 294 U.S. 240 (1934).
[16] 298 U.S. 513 (1936).
[17] 297 U.S. 553 (1936).
[18] 298 U.S. 587 (1936).
[19] 296 U.S. 287 (1935).
[20] 298 U.S. 492 (1936).
[21] 296 U.S. 404 (1936).
[22] 296 U.S. 140 (1935).
[23] 297 U.S. 288 (1936).
[24] 296 U.S. 315 (1935).
[25] 295 U.S. 662 (1935).
[26] 298 U.S. 38 (1936).
[27] 297 U.S. 251 (1936).
[28] 297 U.S. 266 (1936).

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Exchange Commission (registration of securities before use of mails in sale thereof);[29] Whitefield v. Ohio (commerce in convict-made goods);[30] Great Northern Ry. Co. v. Weeks (state tax assessment of railroad property);[31] West Coast Hotel Co. v. Parrish (state minimum wage for women and minors);[32] Labor Board Cases (collective bargaining in labor disputes affecting interstate commerce).[33]

The written opinions rendered in the above cases do not completely assimilate the economic data presented to the Court in support of the respective positions taken by the litigants. So far as has been rationally possible, the opinions have striven to perpetuate the purely legalistic formulations which are the traditional heritage of the Court. But it is inconceivable that with the mass of economic data and argumentation before it, the Court has not found legalisms affected profoundly by the merits of the respective economic contentions. Outcroppings of economics in the opinions reflect the insistency with which the economic positions were argued. It is at least doubtful, upon the basis of these opinions, whether the "seamless web" of the law has sufficient tensile strength to be able to withstand the pressure of purely economic issues. Since a prime function of the judiciary is to articulate the premises upon which it decides, it seems pertinent to determine by what means judges may be freed to consider economic issues overtly and realistically. This requires some inquiry into the possibilities of establishing a preliminary cross-discipline of law and economics.

II

The contemporary confusion concerning the nature of the judicial process, as exemplified by the judiciary of the day, is a manifestation of a long-time dispute carried on within and without academic cloisters as to the true jurisprudence. Writers upon general principles in the common law have perpetuated an ancient faith in the universality of legal formulations. This has been concomitant to, but not completely analogous to, like attempts to establish morals and ethics as rigid intellectual disciplines. To the sweet uses of reason, the judiciary in all times has added the physical powers of government. A realistic school of jurisprudence

[29] 298 U.S. 1 (1936).
[30] 297 U.S. 431 (1936).
[31] 297 U.S. 135 (1936).
[32] March 29, 1937.
[33] April 12, 1937.

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with articulate contemporary adherents off the bench has maintained that law is what the judges as officials do, and that the enunciation of principles is a type of rationalization premised upon psychological motivations. But schools of jurisprudence are localized phenomena: jurisprudence is a profession within a profession. Few lawyers systematize, or find it to their best interests as lawyers selling their talents to systematize, their thinking about the law. The antithesis of lawyer and philosopher was expressed artistically in caustic metaphors by Plato in approximately 340 B.C.[34] Yet Plato was a philosopher and not a lawyer. It is conceivable that Plato would have profited by listening to lawyers talk about lawyers and judges. There is characteristically a type of legal discourse among lawyers-out-of-court far different from the formal verbalization of pleadings, briefs, argumentations, and opinions. Much of this talk is of an economic nature. If records were kept of enough of these discussions, there would appear implicitly the essential elements of a realistic approach to the establishment of an intellectual discipline of law and economics.

A survey of the literature written since 1900 on the general topic of law and economics shows an uncritical acceptance by the economists on the one hand of the formulations of the lawyers, and of the lawyers on the other, of the concepts of the economists.[35] It is clear that neither group of writers has the necessary understanding and facility of manipulation of the technique of the other. The economist has attempted, as a bold demonstration of advanced thought, to translate the language of the law into economic terms, and the legal scholar has too patently displayed an unwelcome erudition by restating legal principles in economic terms. This insistent translation and reciprocal use of glossaries

[34] *Theaetetus*, c. a.

[35] Since 1900, some seventy-six articles bearing upon law and economics have appeared in the technical legal, economic, and political science literature of the United States and England. Some bear intriguing titles; viz., R. J. Heilman, "The Correlation Between the Sciences of Law and Economics," 20 *Calif. Law Rev.* 379 (1932), and Woodrow Wilson, "Interrelation of Sociology, Politics, and Jurisprudence," 5 *Amer. Polit. Sci. Rev.* 1 (1911). Of these, fifty-two have appeared since 1930. Frequently bolder than such intervening treatises and texts as Commons, *Legal Foundations of Capitalism* (New York, 1924), Beard, *An Economic Interpretation of the Constitution of the United States* (New York, 1913), and Laski, *Studies in Law and Politics* (New Haven, 1932), these articles unmistakably define the method of academic thought upon law and economics. The writer is at present engaged upon a detailed ideational analysis of the more significant of these writings.

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has continued over a period of more than forty years as the scholastic substitute for a merger of disciplines and a liberation of thought from academic compartments. There has been polite, gentlemanly deference to departmentalization when the active pressing problems of society called for combined assault unthinkable in terms of genteel academic tradition.

It is true that if lawyers understood the meaning of economic terms their understanding of legal problems would be facilitated,[36] but this alone can scarcely result in that reorientation of discipline which is the central social problem of the day. Something more fundamental is involved.

When one speaks of the "fundamental," one thinks of Justice Holmes. It was he who first stated in authoritative language—words which are slowly changing the psychology of a generation of socially conscious lawyers, establishing an impetus which is only now being revealed as a burning problem in government—the proposition that there is a relativity to legal concepts. Justice Holmes changed the contour of legal thought. This may be illustrated by the bearing of the sit-down strike, which came to the United States in the early part of 1937, upon property right (a legal concept so dear to economists when they approach legal fields). Could the sit-down strike be legal? That lawyers asked the question amongst themselves is indicative of the influence of Justice Holmes. Two approaches appeared.

The first was that the right to possession was an attribute of the right to property. If possession was characteristic of complete property right, the sit-down strike could only be an invasion of that right. Since the universality of a legal proposition, according to a long established and well documented school of jurisprudence,

[36] The social utility of the judicial process varies in direct ratio to the comprehension of judges. Justice Holmes, in a letter to a friend (Holmes, *Book Notices, Uncollected Letters and Papers*, New York, 1936, pp. 163–164), said: "Probably you will find, as I do, that ideas are not difficult, that the trouble is in the words in which they are expressed. Every group, and even almost every individual when he has acquired a definite mode of thought, gets a more or less special terminology which it takes time for an outsider to live into. Having to listen to arguments, now about railroad business, now about a patent, now about an admiralty case, now about mining law, and so on, a thousand times I have thought that I was hopelessly stupid and as many have found that when I got hold of the language there was no such thing as a difficult case. There are plenty of cases about which one doubts, and may doubt forever, as the premises for reasoning are not exact, but all the cases, when you have walled up and seized the lion's skin come uncovered and show the old donkey of a question of law, like all the rest . . . "

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must be maintained in order to assure that certainty in the administration of justice which is essential to government under laws, an invasion of property rights of whatever nature must result in the destruction of property rights, and so in the mechanical application of legal remedies devised to be utilized to stay the destruction and preserve the integrity of the property right.

Legal logic, which under the circumstances is merely syllogistic reasoning, must, under this view, march resolutely to its inevitable conclusion. The claim immediately made that the illegality of sit-down strikes need not be established, since self-evident, was a logistic conclusion premised upon the universality of the abstract legal conception of property right. When this is understood, the emotional expressions over the sanctity of our economic institutions and expressions of fear for all property and for all the numerous and subtle variations of property right may be dismissed as of secondary importance—or perhaps better understood by the formulations of psychologists. The isolation of this logical process may be traced to the formal logic, once so highly polished by the scholastics of the Middle Ages, and discarded as an intellectual tool in other disciplines, with the fruition in modern times of the experimental, pragmatic, scientific process.

"General propositions do not decide concrete cases," said Justice Holmes.[37] He said again and again that all important legal distinctions are distinctions of degree.[38] "I do not suppose that civilization will come to an end whichever way this case is decided."[39] "The Fourteenth Amendment does not enact Mr. Herbert Spencer's *Social Statics*."[40] The implications of these statements have not yet been explored to their fullest. Those who maintained that the sit-down strikes were not necessarily illegal virtually contended that there was no immutable definition of the right to property, but that distinctions could be made within the field of property legally dependent upon the social and economic *milieu* in which a justiciable question arose.

[37] Lochner v. New York, 198 U.S. 45, 76 (1904), cited *supra* note 1.

[38] See, *inter alia*, Louisville Gas and Electric Co. v. Coleman, 277 U.S. 32, 41 (1927); Springer v. Philippine Islands, 277 U.S. 189, 209, 210 (1927); Panhandle Oil Co. v. Knox, 277 U.S. 218, 223 (1927).

[39] Haddock v. Haddock, 201 U.S. 562, 628 (1905). Contrast with the dissent of Justice McReynolds in the Gold Clause Cases, 294 U.S. 240, 381 (1934): "Loss of reputation for honorable dealing will bring us unending humiliation; the impending legal and moral chaos is appalling."

[40] Lochner v. New York, 198 U.S. 45, 75 (1904), cited *supra* notes 37 and 1.

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And this permitted a totally distinct method of legal analysis pursued characteristically as follows: (1) Consideration of sit-down strikes[41] commences with a factual analysis of the social and economic circumstances out of which these strikes arise.[42] So far as mere legality is involved, it is permissible to distinguish between (a) two clerks in a grocery store gaining possession of the premises during a period of the day when the proprietor is absent and refusing to permit him to return to his premises, and (b) a collective bargaining *impasse* in a huge industrial empire set up by means of a corporate device entirely fictional in its nature, created, fostered, and developed by lawyers in a purely ideational world of their own, where tens of thousands of employees on one hand set up their right to bargain against a management which has no ownership of the physical premises,[43] but nevertheless controls the destinies both of the employees and the corporation. (2) The owners, in the theory of the lawyers who invented the corporation, are the stockholders. Thousands of stockholders, each of whom has no effective voice in the policy of the corporation, most of whom are indifferent to all but dividends, but who in the aggregate constitute the

[41] All strikes and all picketing were once criminal conspiracies in the common law.

[42] Cf. the experiential analysis by Chief Justice Hughes of the economic nature of the industries involved in the Labor Board Cases (National Labor Relations Board v. Jones and Laughlin Steel Corporation; National Labor Relations Board v. Fruehauf Trailer Co.; National Labor Relations Board v. Friedman-Harry Marks Clothing Company, Inc., April 12, 1937).

[43] Berle and Means, *The Modern Corporation and Private Property* (New York, 1932), pp. 124–125: "In examining the break-up of the old concept that was property and the old unity that was private enterprise, it is therefore evident that we are dealing not only with distinct but often with opposing groups, ownership on the one side, control on the other—a control which tends to move further and further away from ownership and ultimately to lie in the hands of the management itself, a management capable of perpetuating its own position. The concentration of economic power separate from ownership, has, in fact, created economic empires, and has delivered those empires into the hands of a new form of absolutism, relegating 'owners' to the position of those who supply the means whereby the new princes may exercise their power.

"The recognition that industry has come to be dominated by these economic autocrats must bring with it a realization of the hollowness of the familiar statement that economic enterprise in America is a matter of individual initiative. To the dozen or so men in control, there is room for such initiative. For the tens, or even hundreds of thousands, of workers and of owners in a single enterprise, individual initiative no longer exists. Their activity is group activity on a scale so large that the individual, except he be in a position of control, has dropped into relative insignificance. At the same time, the problems of control have become problems in economic government."

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ownership of the corporation, confer or abdicate control to a management frequently representative of finance. (3) If property right has been divorced from control and has become, in the development of the social and economic structure, merely a proportionate right to receive a dividend (but no actual voice in policy), the foundation of the normal common law conception of property has gone. (4) Could it not reasonably be contended that the "property right" invaded by the sit-down strikers is a flexible concept adjudicable upon the basis of the circumstances under which the strike occurred? Should not equity courts entertain arguments as to why, under the proper circumstances, as courts of equity, they should decline to permit their process to be utilized to protect the "property right" of the management? (5) Were there not "distinctions of degree" here?

If lawyers, following an intellectual tradition exemplified by the finest jurist in modern times, could seriously entertain the latter approach, it follows that economists who have slavishly and uncritically accepted the conventional legal phraseology in which property rights and other legal concepts have been couched must have contributed little to the elucidation of those joint problems which are now vexing the governments of the world. For economic concepts must be in advance of legal concepts. The law of a state never rises higher than its economics.

III

If most legal distinctions are distinctions of degree, the line of demarcation is not necessarily a matter of legalistic determination. Nor is it true that there is a mystery of the law intelligible only to initiates. As applied by legal writers and educators, the process of exclusion and inclusion characteristic of legal reasoning is limited to the "facts" and does not extend to the rule or principle to be applied in justiciable situations. The tool of *stare decisis*—following of precedent—has been conventionally and factitiously utilized for fostering and maintaining the universal and immutable principle of law. If it is recognized that the principle itself is merely a linguistic vehicle for communicating a judicial attitude toward special factual situations, and is therefore a grammatical and rhetorical medium, it is to be concluded that, by and large, the fact situation creates the principle.

Lawyers whose everyday business it is to pursue lines of cases

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for the purpose of establishing a rule which may be invoked in support of their side of a given issue, early in the course of their practice of law, shed regretfully the legal preconceptions which lead them to believe that the courts consistently apply like principles to like sets of facts. In too many cases have courts reversed themselves either explicitly or *sub silentio*. That courts in various jurisdictions may apply different principles to the same set of facts, arriving at conflicting conclusions, is a commonplace. The technique of distinguishing cases in order to arrive at a different result frequently gives rise to the creation of a new principle for the purpose of arriving at the desired result. There is no longer seriously entertained in the minds of jurists consciously aware of the implications of the judicial process a feeling that there is a body of law which needs only to be stated and applied.

If it be recognized by economists that lawyers and judges are becoming increasingly aware that law cannot serve its social purpose in an intellectual vacuum and must obtain its justification through, and be nourished by, the common social experience, an opportunity appears for the utilization of the methods, traditions, and discoveries of economics. The body of the law has expanded enormously. In modern times, the adjudicated and recorded cases have become so numerous that purely legalistic precedent may be found for any given legal proposition. The language of the law, i.e., the terminology in which authoritarian concepts are expressed, and the reasoning of the law, i.e., the permissible modes of thought entertained by judges, furnish the limitations and the directions within which economists must necessarily abide. But in adjusting a principle of action to social and economic reality, the technique of economists is increasingly of greater importance. Since law is concerned with decision and action, and economics with analysis and synthesis, the method of economists must be employed within the limitations of the law. In the drawing of the essential legal distinction whereby the legality of any new sets of facts is tested, economics can in good reason be utilized to furnish the point of departure for the legal distinction.[44]

[44] This is the signification of statements such as: "The combination of economics with law is more likely to come from the exploration of case law by economists because the concrete problems of particular sets of fact are all that is really needed to bring about an approximation of legal and economic definition." C. A. Cooke, "The Legal Content of the Profit Concept," 46 *Yale Law Jour.* 436, 437 (1937).

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Much of the legal mystery may be dispelled if it is understood that law, being of necessity related to action and decision, must in its application be behind the actual economic reality. There is a demonstrable lag between the formulation of a legal rule and the social and economic march of events. This is because law is government, whereas economics is the concern of government. Government represents the paramount and sovereign power in society necessarily superior, in theory, to the various powers, economic and social, allocated amongst the various groups within society.[45] The expression of a rule of law to govern society as a whole must by the very generality of its application be belated in its appearance. The lag between the law and the reality with which it must deal therefore becomes the subject-matter of a merged discipline of law and economics. The measurement of the lag, the understanding of the respective utilities for such measurement of the heretofore closely guarded and jealously protected techniques of law and economics, is the mutual problem with which both lawyers and economists must deal in meeting the progressive crises of the contemporary world. To achieve this objective, both economics and law must become secular, operational, and vulgar.

Education is offered as an answer to practically any social problem of major significance. But is it meaningless to say that the approach to a merger of disciplines of law and economics is through the re-education of a generation of lawyers and economists? The difficulty with conceiving problems of immediate practical significance in terms of education is that education itself has been formalized into a discipline of its own with a professional universe of discourse. There is, it is apparent, more true education to be found outside of the universities in the field which law and economics must occupy. In the teaching of law, the experience outside of the law school is so far removed from the legalisms taught by rote in the law schools that more than a mere deficiency in legal pedagogy is revealed. The fact that the lawyer must unlearn a good deal of the law taught him and make readjustments in his own understanding of the value of the methods he has assimilated is serious and real—and of as much concern to society as to the deans of the law schools. The distinction between the legal scholar and the lawyer, and the noticeable feeling in each that there is

[45] Cf. Merriam, *Political Power; Its Composition and Incidence* (New York, 1934).

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small contact between the two, shows how wide is the break between law in action, discovered and learned by the trial and error of law practice, and the carefully polished aggregates of legal principles, worked over with infinite patience in distinguishing slight facts by the legal scholars. There is more than mere social waste in making the necessary readjustments between law in the law schools and law in action. There are, in this process, those emergent disillusionments and futilities which have operated to rob the law of its intellectual integrity as a profession. And this is true, not because the law professors and the professional legal scholars have not carried out with infinite nicety their art of reconciling irreconcilable cases, but because the lawyers have discovered that the stuff of the law is not truly that delicate, highly polished artificiality propounded by the legal scholars.

The truth of the matter is that law as practiced is a prediction of what judges will do by lawyers trained in legal terminology and judicial methods of thinking. There are no intellectual reservoirs from which truth may be drawn to startle judges with revelation. There is, at best, a highly developed and subtle dialectical process by which judges may be convinced of the merit of a given proposition by hearing the best statement of what they already believe. What judges believe may be discovered by careful adherence to the patterns of the judges' legal training and social and economic background, within the confines of judicial power. Nor is the judicial power so carefully circumscribed by either the legislators or the common law that there is not within the range of judicial power a measure of judicial discretion within which psychology, economic predilection, political motivation, and sociological influence may not operate. Within this range of judicial discretion, the width and breadth and nature of which have not yet been adequately studied (and indeed furnishes a rich field for realistic legal research), the determinative and characteristic quality of the judicial process may be localized. For it is within this range of action that judges make policy, draw lines for the guidance of society between what is permissible and what is not permissible, and exercise one of the most serious and least understood of governmental powers.

The fact that judges are primarily officials and exercise governmental power does not seem, at first impression, to be a startling concept. Yet if applied consistently to legal education and scholar-

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dom, its implications must of necessity permit the influx into the law of the social sciences and, particularly, of that method of thought within the social sciences designated as economics. The *a priori* nature of law immediately loses much of its utility, even from the point of view of intellectual discipline. Instead, the application of the techniques, aptitudes, traditions, and experiences of the law to the current social situations with which government must deal is the primary problem. To understand this is at once to liberalize the law and to establish the foundations of the cross-discipline of law and economics with which these comments are concerned.

It is true that law must be taught and that economics must be taught, and so it is true, also, that law and economics must be taught. By teaching, it must be assumed that there will be furnished to the practitioners of government a method of articulation, an efficiency of application, which would dignify and facilitate the practice of the governmental arts.

To distinguish the seeming and the actual is the gravest problem in teaching law and economics. And this, apparently a simple statement of what is accepted as elementary truth in all advanced "education," is a difficult, as well as an ultimate, objective. There is growing advocacy of reëstablishing the verities of the *trivium*—grammar, rhetoric, and logic—in the higher learning in America. It has been pointed out that the raw empirical data with which the social sciences and the humanities have been concerned, with greater and greater emphasis since the birth of pragmatic philosophy, have tended to swamp scholastic investigation with uncorrelated facts and undigested material. Presumably there may be ground for entertaining a belief that intellectual verities have been forfeited in the surge toward empirical data. Perhaps it is true, as a number of reputable educators contend,[46] that it is time to call a halt to promiscuous fact-gathering and to return to the precision of formalized thought requisite to "cultivation of the intellect." But if the social sciences suffer from the enthusiasm of those who would uncritically emulate the natural sciences, the law suffers grievously from uncritical adherence to the *trivium*. If the criticism levied against the social sciences as a whole is true of economics as taught (including research), the solution for a cross-discipline of law and economics would seem to be a relaxation of the pragmatic

[46] Cf. Hutchins, *The Higher Learning in America* (New Haven, 1936).

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method in economics and of the *trivium* in the law. For in the law it is now essential that actual contemporary data be utilized with a freedom limited only by the verifiable methods employed by the social sciences for testing data. While educators, and especially educators who have been disillusioned law students in their day, may speak contemptuously of the quality of "intellectual discipline" necessary to produce successful lawyers, they might do far better for the lawyers they disown, and hence for society as it is, by breaking down, rather than by fostering, the dualism of the lawyer as a success and the law as a discipline.

It would be a fearful and wonderful thing if competent economists and competent lawyers should confess to each other the limitations of their respective methods, freely and openly, and arriving, through a process of elimination, at concepts understandable to each, should proceed from there to invent a new vocabulary with words and phrases connotative of that which is true of both disciplines; and thereafter, having this new vocabulary, should advance slowly and critically to measure and articulate rules of conduct more closely adjusted to the actual facts. But pride of terminology is the most stubborn of all forms of pride of authorship.

Is there a point of departure from which, not sacrificing the established and certified bodies of knowledge with which law and economics at present deal, an experimental step may be taken in postulating and verifying the teaching of law and economics?

It is not difficult to point to the data which must be employed. They are here and now in a world which trembles under the stress of surging forces. Various new economies originating in the penumbras of decay of the old, are now progressively dramatized in actual visible conflict. There are in existence here and now capitalistic and socialistic economies, with democratic, fascistic, and communistic governmental orderings. To localize in the contemporary world the sphere of law and economics becomes the primary and paramount task. The conditions of this localization are the elimination of those emotional, psychological, and non-rational elements which furnished the impetus bringing into being the present world situation. The importance of these factors is, of course, evident, but for law and economics as a merger of discipline, the sound and the fury, the tumult and the shouting, the mutations of political action, and the methods of achieving power are secondary. Of high

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significance is the determination, first, of what is being done in economies on the march in the contemporary world; second, of how it is being done. Elimination of the non-rational is and must be the first step in teaching law and economics.

If, by the application of critical and tempered analysis, it can be agreed that there are characteristic economies in course of being sufficiently revealed to serve for purposes of study, there must then be evolved (by properly orientated research) a statement of the functions of legal and economic formulations in making rationally tenable the actual application of the power of the state to the regulation or control of economic activity. By "rationally tenable" is meant an understanding of the devices by which those in power attempt ideationally to convince the governed of the reasonableness of the methods by which they are governed. For the common experience of men as political animals is that no matter how strong is the emotion by which they may be originally impelled, they seek with growing insistence for the rationalization to which they may cling in the time when their emotions dim. The reasoning of the law, as it embodies implicitly formulations extraneous to the law, is that rationalization.

When the functions of formulations are considered critically, investigation, in the very nature of the problem, must proceed into philosophical fields. Inevitably, the findings of epistemological inquiries must be employed. Since the meaning of meaning is the basis of the understanding of formulations, the technique of verbalization requires an examination of the utility and value of the abstract in law. For it does not necessarily follow that a realistic jurisprudence is one which would inhibit or destroy abstractions or deny "principles." The utility of the abstract as an efficient instrument for expressing generally the social meaning in given facts is visibly apparent in the administration of justice.[47] While there are recurrent dispute and sharp difference of opinion as to whether the Supreme Court properly interpreted or correctly employed the use of the abstraction, "due process of law," in the Fourteenth Amendment, there has been no attack upon the phrase itself. "Due process of law" has served as a connotative expression of no precise meaning employed by the judiciary to subsume a multitude of rules

[47] "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." Holmes, J., Towne v. Eisner, 245 U.S. 418, 425 (1917).

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of conduct for society. It remains to be seen whether those rules could have been developed more realistically without the integrative force of a vague phrase. The meaning of the abstract and its function in the thinking of judges is more adequately understood in terms of epistemology than of any revealed ideational technique, and it need not be pointed out that "due process of law" is merely one of an untold number of abstractions which furnish the framework supporting the structure of legal thought.[48] The realistic problem is not solely the determination of how judges have applied the abstraction or how it is likely that the judges will apply the abstraction, given a set of facts, but more the consideration of why it is that legal abstractions need to be employed, of why meaning cannot be communicated without utilizing an abstraction of no precise meaning for a point of departure.

While treatment of the value of the abstract is as important for these purposes as investigation of the meaning of the abstract, the two must be clearly distinguished. Questions of value are better approached comparatively. In the cross-discipline of law and economics, the value of the abstract must be measured in the light of the enhanced significance of the social sciences and the statistical methods employed so extensively therein. Is there a necessary inverse ratio in judicial thinking as between the use of the abstract and the use of statistical methods? Will the growing utilization of quantitative data and statistical approaches result in a diminution of the binding force of the abstract upon judicial thinking? Do the quantitative method and the techniques of measurement generally mean that abstractions will be progressively foregone, or are abstractions indispensable there also? Answers to these ques-

[48] A few: "legal entity," "rule of reason," "police power," "affected with a public interest," "flow of commerce," "public purpose", "public use," "public utility," "based on reason," "necessary and proper," "common carrier," "class legislation," "doing business," "good cause," "good faith," "impairing obligation of contract," "liberty of contract," "privileges and immunities," "beyond a reasonable doubt," "common nuisance," "quasi," "reasonable," "unlawful," "de facto," "current value," "cost of replacement," "delegation of legislative power," "eminent domain," "full faith and credit," "best interests of the public," "combination in restraint of trade," "equal protection of the law," "good reason to believe," "sale," "unfair competition," "denial of civil rights," "burden upon interstate commerce," "fair trial," "immaterial," "fair and reasonable (value) (price) (compensation)," "just cause," "conspiracy in restraint of interstate commerce," "unreasonable search and seizure," "meeting of minds," "market value," "property," "liberal construction," "implied," "just and reasonable rate," "lessening competition to a substantial degree."

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tions will tend to reveal whether the detailed operational and statistical approach characteristic of Justice Brandeis' opinions within the framework of the "due process of law" abstraction will, if emulated and developed, result in bringing the law nearer to social reality.

And yet formulations, both legal and economic, serve to interpret to those who are governed the meaning of the power exerted by the state; serve also to quiet dispute, remove uncertainties, and direct the activities of individuals and groups in organized society. There is psychological need for certainty, and it is to the law that members of society look for absolute determination of many, if not all, questions of the relationship of individual and individual and of the one to the many.[49] If formulations must of necessity be expressed in abstractions, so that there may be general rather than particular connotation, will the development of the quantitative technique foster uncertainty? Is uncertainty socially desirable as contrasted with the quality of the certainty which the law has attempted to dispense?

It has been pointed out that contemporary data relative to contemporary economies are the stuff out of which a cross-discipline of law and economics must be established. But all economies, past and present, and presumably those of the future, will formulate economic control legally by means of statutes, orders, decrees, rulings, regulations, codes, agreements, and other devices of a legalistic nature. Legislative and administrative draftsmanship, whereby the rules of conduct are expressed, is a delicate and difficult art requiring a technique quite distinct from the discovery of the general policy which legislation (the word being used here to include quasi-legislative functions committed to the discretion of officials and administrative bodies) is to further. Legislative draftsmanship reveals universal qualities in whatever government governing. The legislation of Soviet Russia, the Third Reich, and the New Deal, for example, if compared solely upon the basis of phraseology and technique, will reveal similarities of an extensive and significant nature. If there is a science of legislation, little investigation of its nature has been made. The technique by which multitudinous situations, unforeseen and unpredicted, are to be governed by the formulation of the day is indicative of the common problems faced by all governments in attempting to make workable

[49] Cf. Frank, *Law and the Modern Mind* (New York, 1930).

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the particular policy for which the government stands. In the specific considerations of legislation may be found the relationship between the economic formulation or theory and the method by which it is made to work. Establishing the principles of a science of legislation is one of the necessary steps which must be taken to arrive at a proper understanding of the relative rôles of law and economics. It is apparent that statistics, graphs, formulae, interpretations of history and institutions, are not part of, and cannot be included in, the specific legislative formulations by which the particular regulation is to be achieved. Nevertheless, legislation in its present category as an art must be reduced to the intelligibility of a science, and the most fruitful approach to this end is, again, the establishment of cross-disciplines between law and the social sciences.

If *law and economics* is to be taught, the principles cannot be expounded on an *a priori* basis, and from considerations of pedagogical and pragmatic utility, if from no other, must emerge study of present governmental techniques in the United States and abroad. Study of characteristic governmental programs in the contemporary world will reveal typical techniques deriving logically from the uniform methods of legislation employed by all civilized governments. Much will be achieved by comparative analysis. Utilized to some extent in political science, the comparative method is admirably suited to illustrate, by the charting and measuring of significant variations, the actual techniques of government, as distinguished from the political structures by means of which the powers of government are allocated for administrative purposes.

It may be asked why such great stress is to be put upon the development of a cross-discipline of law and economics and why it is not equally important to study the relationship of law and psychology, law and sociology, law and politics. Surely economics is not the only social science, and surely almost all of the social sciences have something significant to contribute to the law. While other social sciences can serve to explain in realistic terms what the law is and ought to be, economics comes to the fore when the changing nature of the law as a method of government is dwelt upon. In a world whose great problems are economic, the law turns slowly on its axis, moving in the direction of the hopes and aspirations of governments. Whether this movement is to be impeded or freed

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is crucial in the realization of economic goals. The goals of the governments of the world are all moral. Each with great solemnity places its objectives on the highest ethical planes. None of the ruling groups in any government will deny officially that they attempt to achieve the good, the just, and the true in terms of the many whom they govern. The great objectives set by governments are today in terms of the great evils which have resulted from economic maladjustments. Consequently, so far as law is utilized to facilitate the realization of economic justice, so far as it is the operative mechanism by which economic policy works, it must be understood first in terms of its relationship to the method and substance of economic science.

It is not to be denied that if judges understood the psychological motivations which lead them to decide in favor of one litigant rather than another, where the issues are nicely balanced, a better type of justice would be dispensed. Yet, in the end, this is merely saying that if any individual understood the motivations of his actions, he would be a better person. There is much work to be done in the psychopathology of the judicial process if it is assumed, as it has been in this discussion, that the law is what judges as officials do; but this is not to deny the immediate importance of the establishment of a cross-discipline of law and economics. The realities of government demand it; so, also, does the basic problem of the social sciences, for it may eventually prove that only through the medium of law will there result the marriage of the social sciences so long awaited.

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CONSTITUTIONAL DEVELOPMENTS IN SAORSTÁT EIREANN AND THE CONSTITUTION OF ÉIRE: I, EXTERNAL AFFAIRS*

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Under terms of the Treaty of 1921 between Great Britain and Ireland, it was agreed that: "Ireland shall have the same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa, with a Parliament having powers to make laws for the peace, order and good government of Ireland and an Executive responsible to that Parliament, and shall be styled and known as the Irish Free State."[1] The status of the Irish Free State was further defined by this language: "Subject to the provisions hereinafter set out, the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice and constitutional usage governing the relationship of the Crown or the representative of the Crown and of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State."[2] The Imperial Government gave this treaty the force of law by the Irish Free State (Agreement) Act of March 31, 1922.[3] To implement the treaty, Dáil Eireann, sitting as a constituent assembly, enacted a constitution for the Irish Free State in 1922. This constitution declared: "The Irish Free State (otherwise hereinafter called or sometimes called Saorstát Eireann) is a co-equal member of the Community of Nations forming the British

* Part II of this article, dealing with "Internal Affairs," will appear in the December issue. MAN. ED.

[1] *Articles of Agreement for a Treaty between Great Britain and Ireland*, 1921, Art. I; 12 Geo. 5, chap. 4.

[2] *Ibid.*, Art. II. The treaty provided further that the representative of the Crown in Ireland be appointed in like manner as the governor-general of Canada [Art. III]. Members of the Parliament of the Irish Free State were required to take the following oath: "I . . . do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established and that I will be faithful to H. M. King George V., his heirs and successors by law, in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations." [Art. IV.]

[3] 12 Geo. 5, chap. 4.

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Commonwealth of Nations."[4] It was given the force of law by the Imperial Government in the Irish Free State Constitution Act of December 5, 1922.[5]

All this was not accomplished, however, without dissension in Ireland. In the years prior to the treaty settlement, the Sinn Fein party, with its objectives of an independent and united Ireland, had produced a surprising unanimity of opinion in Southern Ireland. In 1922, this accord was broken. It is a matter of history that Eamon de Valera as president of the legislative assembly of the Irish "Republic" split with the Irish delegation which, headed by Arthur Griffith, signed the treaty. Before Dáil Eireann he urged rejection of the treaty. When the Dáil ratified the treaty on January 7, 1922, by a vote of 64 to 57, de Valera resigned the presidency. The pro-treaty members of Sinn Fein then established a provisional government and Arthur Griffith became president of Dáil Eireann.

Pursuant to the publication of the treaty in 1921, de Valera had issued his alternative proposals in a series of articles generally known as Document Number 2. In this document, he set forth his theory of an independent Ireland in external association with the British Commonwealth of Nations.[6] With Sinn Fein split into pro- and anti-treaty factions, internal peace was jeopardized. In June, 1922, fighting broke out between the Republican forces and the Free State army. The civil war then begun was waged until April 24, 1923. During the tempestuous year 1922, Arthur Griffith died and William T. Cosgrave became the next president of Dáil Eireann. In spite of the civil war, the constitution was put into

[4] *Constitution of the Irish Free State*, Art. I.

[5] 13 Geo. 5, Sess. 2, chap. 1. The constitution was put into operation by proclamation on December 6, 1922, as prescribed in Art. LXXXIII. Northern Ireland promptly exercised its option under the treaty to remain within the United Kingdom.

[6] According to his plan, Ireland was to be associated with the "states of the British Commonwealth" for the purposes of "common concern." When acting as an associate, the rights, status, and privileges of Ireland were to be "in no respect less than those enjoyed by any of the component states of the British Commonwealth." He defined matters of "common concern" to include defence, peace and war, political treaties, and all matters then treated as of common concern by the states of the British Commonwealth. In matters of "common concern" there should be "such concerted action founded on consultation as the several governments may determine." For the purposes of the Association, de Valera was willing that Ireland should recognize "His Britannic Majesty as head of the Association." *Document No. 2*, secs. 2–6.

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effect on December 6, 1922. Cosgrave and the pro-treaty forces rode out the storm and asserted the authority of the Free State government. De Valera and the Republicans were repulsed in their resort to force.

A great deal of legal grist was ground between the defeat of the Republican army in the civil war and de Valera's coming into power in 1932 as the leader of the Fianna Fáil party. During the administration of Cosgrave, which lasted from 1922 to 1932, Saorstát Eireann made many advances. The Imperial Conference of 1926 declared that the United Kingdom and the Dominions were "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." After the work of a conference of experts in 1929 and the approval of their work by the Imperial Conference of 1930, it was urged that the status of the Dominions should be given a legal basis. The Imperial Government, with the approval of the Dominions, took such action by the Statute of Westminster in 1931.[7]

In the first place, the Statute of Westminster provided that the Colonial Laws Validity Act of 1865 should not apply to any law made by the parliament of a Dominion after the statute became effective (December 11, 1931).[8] It provided further that: "No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion."[9] The parliament of a Dominion had "full power to make laws having extra-territorial operation."[10] No act of the Parliament of the United Kingdom passed after the commencement of the Statue of Westminster could extend, or be deemed to extend, to a Dominion as part of the law of the Dominion, unless it was expressly declared

[7] A. B. Keith, *The Governments of the British Empire* (1935), pp. 33–34.
[8] 22 Geo. 5, chap. 4, sec. 1.
[9] *Ibid.*, sec. 2, par. 2.
[10] *Ibid.*, sec. 3.

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in the act that the Dominion had requested and consented to its enactment.[11]

The status of a Dominion in the British Commonwealth of Nations, however, rests upon more than legal definition. Only by mutual respect and willingness of the member-states to coöperate and negotiate can the Crown be, as the preamble to the Statute of Westminster states, the "symbol of the free association of the members." At the close of the Cosgrave administration, with the Statute of Westminster as a legal touchstone for Dominion status, Saorstát Eireann and the United Kingdom were closer to that reciprocal frame of mind than at any time before or since in recent history. At the same time, this very *rapport* between the Cosgrave administration and the United Kingdom was an element of vulnerability; for the Republican forces in Ireland could complain, rightly or wrongly, against a pro-British administration.

Additional factors soon combined to bring down the Cosgrave administration. A severe depression was abroad in the world. It was a time when the ruling party in a democracy felt more than normal resentments accumulating against it from economic forces. In addition, certain internal policies, such as the curbing of the spoils system in local units of government and the development of centralized control over local officers, hurt the political prospects of Cosgrave's Cumann na nGaedheal party. Finally, the issue of the land annuities reared its head. These annuities were really payments on the installment system by Irish tenants for land bought from English landlords. In a secret agreement signed by Cosgrave for the Free State and by John W. Hills for the British government in 1923, the former undertook to pay the full amount of the annuities accruing from time to time. This involved the actual collection from the tenant purchasers and the transfer of the money so collected to appropriate funds in England. This pledge was repeated in the Heads of the Ultimate Financial Settlement Agreement of 1926. Neither of these agreements was ratified by the Dáil, and that of 1923, as a matter of fact, was not presented to the Dáil until 1932.

During the years in which Cosgrave struggled to lay the foundations of Saorstát Eireann, the Fianna Fáil party steadily rose as an opposing force. The number of Fianna Fáil deputies returned amounted to 34 in June, 1922; 39 in August, 1923; 44 in June, 1927;

[11] *Ibid.*, sec. 4.

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57 in September, 1927; and 72 in February, 1932. Until 1927, however, the Fianna Fáil deputies did not take their seats in the Dáil, as they refused to take the oath of allegiance to the English king as prescribed by the treaty and the constitution. During 1927, legislation was passed requiring candidates prior to nomination to declare their willingness to take the oath and disqualifying deputies who did not do so. Faced with this bitter pill, Fianna Fáil decided to submit to the oath, at the same time denouncing it as an empty formula. In 1927, most of the Fianna Fáil deputies entered the Dáil.[12] On the opposition bench, de Valera was able to make political capital of many issues, including the payment of the land annuities and the maintenance of the oath of allegiance. The stage was set for the transfer of power from Cumann na nGaedheal to Fianna Fáil.

Fianna Fáil was able to obtain a majority in the Dáil in March, 1932, with the support of Labor, and de Valera became president of the Executive Council. Forthwith the British government was notified that the Irish government proposed to discontinue the land annuity payments. Both governments were agreeable to arbitration of the issue but disagreed on the personnel of the arbitral tribunal. The British government favored a tribunal restricted to British subjects; the Irish government would not accept such a limitation; neither government would yield.[13] President de Valera also notified the British government of the intention of Saorstát Eireann to abolish the oath of allegiance.[14]

The so-called economic "war" ensued. The British government retaliated in July, 1932, with an act permitting the Treasury to impose duties on imports from the Irish Free State if it appeared that failure of the Free State to fulfill obligations was resulting, or was likely to result, in a loss to the revenue of any public fund in the United Kingdom.[15] Under Treasury order, duties were made effective on November 9, 1932.[16]

Another general election was held in Saorstát Eireann in January, 1933. In his election manifesto, de Valera noted among his objectives the abolition of the oath of allegiance and the retention of the land annuities by Saorstát Eireann. It could not be expected

[12] See Nicholas Mansergh, *The Irish Free State* (1934), pp. 254, 280–281, 287.
[13] Henry Harrison, *Ireland and the British Empire* (1937), pp. 37–38.
[14] See *supra*, note 2. [15] 22 and 23 Geo. 5, chap. 30.
[16] *Statutory Rules and Orders*, 1932, No. 905.

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that this would not disrupt whatever Anglo-Irish accord had been achieved by the course of events in the closing years of the Cosgrave government. Elsewhere in his manifesto, de Valera warned that a lasting peace between the people of Great Britain and Ireland could be achieved on one basis only: "That the people of Ireland shall determine freely for themselves what their governmental institutions are to be and what shall be the extent of their coöperation with Britain on matters of agreed common concern."[17] In the general election of 1933, Fianna Fáil achieved a majority over all other parties, and the rule of de Valera went on without the necessity of coöperation from Labor.

In 1933, the Constitution (Removal of Oath) Act was passed by the Oireachtas (Parliament). It amended the constitution of the Irish Free State by removing the oath which had been prescribed for members of the Irish parliament by the treaty and incorporated in Article XVII of the constitution. To accomplish the removal of the oath, it was also necessary to strike from Article L of the constitution the clause which permitted amendments only "within the terms of the Scheduled Treaty." This phrase was accordingly deleted by the same amendment which removed the oath.[18] In other words, a limitation on the amending power was relaxed by an amendment. In the same year, Constitution (Amendment No. 22) Act was passed amending Article LXVI of the constitution so as to terminate the right of appeal from the Supreme Court of the Irish Free State to His Majesty in Council.

The validity of both the Constitution (Removal of Oath) Act and the Constitution (Amendment No. 22) Act was sustained by the Judicial Committee of the Privy Council in Moore v. Attorney-General for the Irish Free State in 1935. This case arose out of a petition for special leave to appeal from a decision of the Supreme Court of the Irish Free State which dismissed an action of Moore and others against a number of defendants for alleged trespass on a fishery in the tidal portion of the River Erne.[19] In spite of the abolition of appeal by Constitution (Amendment No. 22) Act, the Judicial Committee heard the argument. The decision of the

[17] *Election Manifesto of de Valera, Jan. 20, 1933*, as printed in *The Irish Press*, June 15, 1937.

[18] Constitution (Removal of Oath) Act, 1933, sec. 3; also known as Act of the Oireachtas, No. 6, of 1933.

[19] Moore v. Attorney-General for the Irish Free State (June 6, 1935), 51 *The Times Law Reports* 504, 507.

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Judicial Committee begins with the premise that the right of appeal to His Majesty in Council was implicit in Article II of the Anglo-Irish treaty. That article "specially ensured the right to petition His Majesty in Council, because that right was part of the law, practice, and constitutional usage then governing the relationship of the Crown or representative of the Crown and of the Imperial Parliament to the Dominion of Canada."[20] This was the standard set for Anglo-Irish relations and it involved, accordingly, the right to petition His Majesty in Council.

In the opinion of the Judicial Committee of the Privy Council then, the 1933 amendment to Article LXVI constituted an abrogation of the treaty. It could not be valid, therefore, unless the previous Constitution (Removal of Oath) Act was also valid. It was this act which struck from the constitution the phrase limiting amendments to the terms of the treaty. The view of the Judicial Committee was that both the Constitution (Removal of Oath) Act and the Constitution (Amendment No. 22) Act were valid, since they were within the competence of the Irish Free State pursuant to the Statute of Westminster. A pertinent summary included within the opinion shows the sweeping nature of the conclusions reached in this case:

> The position may be summed up as follows: (1) The Treaty and the Constituent Act respectively form parts of the statute law of the United Kingdom, each of them being parts of an Imperial Act. (2) Before the passing of the Statute of Westminster it was not competent for the Irish Free State Parliament to pass an Act abrogating the Treaty because the Colonial Laws Validity Act forbade a Dominion Legislature to pass a law repugnant to an Imperial Act. (3) The effect of the Statute of Westminster was to remove the fetter which lay upon the Irish Free State Legislature by reason of the Colonial Laws Validity Act. That Legislature can now pass Acts repugnant to an Imperial Act. In this case they have done so.
>
> It would be out of place to criticize the legislation enacted by the Irish Free State Legislature. But the Board desire [*sic*] to add that they are expressing no opinion upon any contractual obligation under which, regard being had to the terms of the Treaty, the Irish Free State lay. The simplest way of stating the situation is to say that the Statute of Westminster gave to the Irish Free State a power under which they could abrogate the Treaty, and that, as a matter of law, they have availed themselves of that power.[21]

[20] *Ibid.*, p. 506. In this view the Judicial Committee followed the earlier opinion rendered in Performing Right Society v. Bray Urban District Council (1930), 46 *The Times Law Reports* 359.

[21] Moore v. Attorney-General for the Irish Free State (June 6, 1935), 51 *The Times Law Reports* 504, 507.

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This decision of the Privy Council has been criticized by A. Berriedale Keith as terminologically inaccurate. He holds that the decision errs in asserting that the Statute of Westminster empowered the Free State to abrogate the treaty. He concludes: "What is meant is that the Free State can, in its view, legally remove any provision of the treaty from the statute-book of the State in which it was inserted by the constitution. Thus the State could repeal the authority of Article 7 of the treaty under which British forces are lawfully in occupation of Irish territory. But, of course, that is irrelevant to the binding force inter-Imperially, or as the Free State holds internationally, of the treaty, which continues to exist, unless and until it is abrogated by the assent of the two governments, parties to it, or it is formally repudiated by the Free State on the score that it was procured by *force majeure* or that relations have so changed since its conclusion that it has ceased to possess validity. But neither of these contentions would be legally convincing."[22]

Another criticism of the Judicial Committee's decision in Moore v. Attorney-General for the Irish Free State was made by Henry Harrison in 1937. He objected that such a broad pronouncement was unnecessary since the decision was merely that the appellate functions of the Council were validly terminated. It was a one-sided pronouncement after no more than a partial consideration of the whole argumentative field. It was a sterile pronouncement which did not look to the actualities behind the treaty and the Statute of Westminster. Of the extreme embarrassments involved in a purely legalistic view of the Anglo-Irish treaty, Harrison wrote: "If the Treaty was an imperialistically imposed law, here was a further imperialistically imposed law warranting its total extinction. Where was there room for contractual obligations in the midst of legal constraint? Is compliance with law a matter of contract with the State? And where is there any precedent for an Imperial Legislature conferring express legal powers upon a subordinate body to violate its contract with the sovereign authority."[23] If de Valera needed any encouragement to pursue a fearless policy in amending the constitution of Saorstát Eireann, he must have derived some from the sweeping generalizations in Moore v. Attorney-General.

[22] *The Governments of the British Empire* (1935), pp. VI–VII.

[23] *Ireland and the British Empire* (1937), p. 196. For further discussion of this issue, see *post.*, pp. 860–861.

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Meanwhile, economic hostilities continued between the United Kingdom and a Dominion. The Free State had discontinued payment of the land annuities; the United Kingdom had proceeded to erect tariff barriers against imports from Saorstát Eireann; and the Saorstát had undertaken a policy of sponsoring and protecting home industries by means of tariffs and quotas on many types of imports. De Valera accelerated plans for making Ireland less dependent on the English market. The Fianna Fáil government promoted the raising of wheat and sugar beets for domestic consumption, a corresponding reduction in grazing acreage, and the establishment of Irish factories protected by tariff policies. In 1935, the economic war was lessened in intensity by the Coal-Cattle Pact whereby the Irish market was re-opened to English coal in return for English concessions in lowering tariff duties on Irish cattle. Subsequent coal-cattle pacts followed this general formula. Nevertheless, the economic war intensified party strife in Saorstát Eireann. The Cosgrave opposition pounced on the war as a major blunder into which de Valera had stumbled by his uncompromising attitude on the land annuity payments. Within the Republican ranks of Fianna Fáil, there was engendered once more the attitude of "no-surrender" to the ancient foe.

On both sides of the Irish Sea, ulterior motives have been in the background of governmental policies. On the English side, the economic penalties have probably been more than mere retaliation over the land annuities. It seems only reasonable to assume that these were originally imposed in the hope of bringing the de Valera government to grief because of the removal of the oath from the constitution and because of other policies as well as the retention of the land annuities. When this failed, the English attitude became one of studied indifference. On the Irish side, the drive for economic self-sufficiency has been collateral to political objectives. De Valera did not rest the case for Saorstát Eireann on the achievement of Dominion status by the treaty and the further definition of that status by the Statute of Westminster. He has gone back constantly, as he did in his election manifesto of 1933, to the right of the people of Ireland to determine freely for themselves from time to time the extent of their coöperation with Great Britain. This point of view was emphatically expressed in 1936 and 1937.

At the time of the abdication of Edward VIII in 1936, the Irish Free State failed to coöperate with the other members of the Brit-

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ish Commonwealth of Nations. The preamble of the Statute of Westminster stated in 1931 that it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another "that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom."[24] Nevertheless, with His Majesty's Declaration of Abdication Bill which became law on December 11, 1936, the Irish Free State was not associated. The action of the Free State was unique among the Dominions. On December 11, 1936, the Free State adopted a Constitution (Amendment No. 27) Act, the effect of which was to eliminate all reference to the king and the governor-general from the constitution of Saorstát Eireann.[25] For example, Article XII provided that the Oireachtas should "consist of the King and one House, the Chamber of Deputies (otherwise called and herein generally referred to as 'Dáil Eireann')." In the case of this article, Amendment No. 27 removed the words "the King and." Again, Article XLI provided: "So soon as any Bill shall have been passed by Dáil Eireann, the Executive Council shall present the same to the Representative of the Crown for signification by him, in the King's name, of the King's assent." Amendment 27 changed this Article to read: "So soon as any Bill shall have been passed by Dáil Eireann, the Chairman of Dáil Eireann shall sign such bill and the same shall become and be law as on and from the date of such signature."

The most fundamental change was made in Article LI. This article, previous to December 11, 1936, declared:

> The Executive Authority of the Irish Free State (Saorstát Eireann) is hereby declared to be vested in the King, and shall be exercisable, in accordance with the law, practice and constitutional usage governing the exercise of the Executive Authority in the case of the Dominion of Canada, by the Representative of the Crown. There shall be a Council to aid and advise in the government of the Irish Free State (Saorstát Eireann) to be styled the Executive Council. The Executive Council shall be responsible to Dáil Eireann and shall consist of not more than twelve nor less than five Ministers appointed by the Representative of the Crown on the nomination of the President of the Executive Council.

[24] 22 Geo. 5, chap. 4.

[25] At the time the Seanad had been abolished, and under the terms of Article L the Dáil could amend the constitution. Constitution (Amendment No. 27) Bill was introduced and passed in the course of a seven and one-half hour session.

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Amendment No. 27 struck out much of the language of this article, including all reference to the king and his representative. Language was inserted, however, by which the Dáil might by statute set forth the terms of the association of the Irish Free State with the British Commonwealth of Nations. As revised, then, on December 11, Article LI declared:

> There shall be a Council to exercise the executive authority and power of the Irish Free State (Saorstát Eireann) to be styled the Executive Council. Provided that it shall be lawful for the Executive Council, to the extent and subject to any conditions which may be determined by law to avail, for the purposes of the appointment of diplomatic and consular agents and the conclusion of international agreements of any organ used as a constitutional organ for the like purposes by any of the nations referred to in Article I of this Constitution. The Executive Council shall be responsible to Dáil Eireann and shall consist of not more than twelve nor less than five Ministers appointed in the manner hereinafter provided.[26]

In this revision of Article LI, de Valera made it evident that he intended for the time being to continue the association of the Saorstát with the British Commonwealth. When he was asked directly in debate in the Dáil as to the Free State's position in the Commonwealth, he referred to the fact that Article I, which is mentioned as above in Article LI, continued as part of the fundamental law. This Article I read as follows: "The Irish Free State (otherwise hereinafter called or sometimes called Saorstát Eireann) is a co-equal member of the Community of Nations forming the British Commonwealth of Nations."

The intent of de Valera on December 11 was therefore clear. The aim was to abolish constitutional reference to the king and to the governor-general, but, on the other hand, to retain Dominion status. This was assured from the point of view of Irish law on December 12 by the passage of the Executive Authority (External Relations) Bill. This bill turned upon the constitutional peg which had been created in Article LI on the previous day. Since this bill set forth in detail the position of the Irish Free State in the British Commonwealth of Nations and recognized the abdication of Edward VIII, it is quoted herewith:

> 1.—(1) The diplomatic representatives of Saorstát Eireann in other countries shall be appointed on the authority of the Executive Council.

[26] The president of the Council was elected by Dáil Eireann. He nominated a vice-president. He appointed the other ministers with the assent of Dáil Eireann. [Art. LIII.]

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(2) The consular representatives of Saorstát Eireann in other countries shall be appointed by or on the authority of the Executive Council.

2.—Every international agreement concluded on behalf of Saorstát Eireann shall be concluded by or on the authority of the Executive Council.

3.—(1) It is hereby declared and enacted that, so long as Saorstát Eireann is associated with the following nations, that is to say, Australia, Canada, Great Britain, New Zealand, and South Africa, and so long as the king recognized by those nations as the symbol of their co-operation continues to act on behalf of each of those nations (on the advice of the several Governments thereof) for the purposes of the appointment of diplomatic and consular representatives and the conclusion of international agreements, the king so recognised may, and is hereby authorised to, act on behalf of Saorstát Eireann for the like purposes as and when advised by the Executive Council so to do.

(2) Immediately upon the passing of this Act, the instrument of abdication executed by His Majesty King Edward the Eighth on the 10th day of December, 1936 (a copy whereof is set out in the Schedule to this Act), shall have effect according to the tenor thereof and His said Majesty shall, for the purposes of the foregoing subsection of this section and all other (if any) purposes, cease to be king, and the king for those purposes shall henceforth be the person who, if His said Majesty had died on the 10th day of December, 1936, unmarried, would for the time being be his successor under the law of Saorstát Eireann.

4.—This Act may be cited as the Executive Authority (External Relations) Act, 1936.

There was an attached schedule which set forth the Instrument of Abdication of Edward VIII.

Since the net result of the retention of Article I of the revised language of Article LI, and of the Executive Authority (External Relations) Act, was to maintain in Irish law the association of Saorstát Eireann in the British Commonwealth of Nations, the opposition in the Dáil raised serious questions as to the "true" republicanism of de Valera. The President was accused of abolishing only legal fictions by deleting reference to the king and the governor-general from the constitution, while the fundamental status of Saorstát Eireann as a Dominion apparently remained unchanged. Cosgrave as the leader of the Fine Gael opposition, a group made up of the former Cumann na nGaedheal, Centre, and other parties, twitted de Valera's Fianna Fáil party as a set of "royal Republicans" serving under three kings, George V, Edward VIII, and now George VI. President de Valera was quick to admit that he was abolishing legal fictions such as the authority of the representative of the Crown to sign bills. However, he insisted that this action would clarify the relations of England and Saor-

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stát Eireann and would promote, in the long run, mutual understanding. The Fine Gael opposition in the Dáil made something of the point that one of the characteristics of a Dominion was an internal as well as an external relation to the Crown. The internal relation was expressed, in part, by the legal fiction that the king gave his assent to Dominion legislation through the representative of the Crown, i.e., the governor-general. De Valera's view was that this legal fiction was confusing and might better be abolished. He insisted that the removal of the king and the governor-general from the constitution did not affect the status of Saorstát Eireann as a Dominion, since Article I of the constitution remained. While the Fine Gael party opposed Amendment No. 27 on December 11, it voted with Fianna Fáil in support of the Executive Authority (External Relations) Bill on December 12. This bill, like the Constitution (Amendment No. 27) Bill, was passed after a single day of deliberation in the Dáil.

The action which the Fianna Fáil majority in the Dáil took on December 11 was no sudden whim or fancy. For some months, de Valera had made known his determination to abolish the office of governor-general and to introduce a president elected by the Irish people. Provision for this transition was scheduled to appear in the "new" constitution, and the new constitution was originally scheduled for introduction in the Dáil in the fall of 1936. However, the preparation of this document proved so formidable a task that November of 1936 had come and gone, and the new constitution was not yet completed. The crisis created by the abdication of Edward VIII was seized as an opportune moment at which to effectuate some of the ends proposed for the new constitution. Early in November, 1936, the annual Ard-Fheis of Fianna Fáil met in Dublin. President de Valera then set forth in a general way to these party representatives from all over Ireland the ideas which he had in mind for the new constitution. He made it clear that the governor-general would give way to a chief executive selected by the vote of the Irish people. He also declared that there would be introduced in the Dáil simultaneously with the new constitution a bill which would continue the association of Saorstát Eireann in the British Commonwealth of Nations. De Valera's subsequent proposals of December 11 and 12 were thus clearly part of a general program which had long been in preparation. The abdication of Edward VIII afforded an unexpected opportunity, but the neces-

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sity of acting in haste precluded the introduction of the uncompleted constitution. De Valera therefore proposed to set up a temporary adjustment in which neither the governor-general nor a new officer (the proposed president) would function. This left only the one-house legislature and the Executive Council. In a way, this was not a radical change, since the senate had previously been abolished and the governor-general had already become a salaried nonentity. It did produce a make-shift arrangement in that the Ceann Comhairle (chairman) of Dáil Eireann was authorized to sign bills which became laws as on and from the date of such signature. The Executive Authority (External Relations) Bill was the embodiment of the de Valera plan to introduce simultaneously legislation dealing with the external relations of the Saorstát.

The draft of the new constitution (Bunreacht na hEireann) was not ready until May 1, 1937. It was debated by the Dáil, passed by that body with few major amendments on June 14, 1937, and submitted to the people for a plebiscite on the day of the general election (July 1, 1937). Some 1,324,994 out of a total of 1,777,823 registered electors took part in the general election. In the voting on the constitution, 685,105 valid ballots were cast for and 526,945 against the charter, or an affirmative majority of 158,160.[27]

In Bunreacht na hEireann (1937), Article I of the constitution of 1922, establishing Saorstát Eireann as a co-equal member of the British Commonwealth of Nations, does not appear. Article I of the constitution of 1937 reads as follows: "The Irish Nation hereby affirms its inalienable, indefeasible, and sovereign right to choose its own form of Government, to determine its relations with other nations, and to develop its life, political, economic and cultural, in accordance with its own genius and traditions." Proceeding from this affirmation, the new constitution sets forth in subsequent articles the national territory, the jurisdiction of the parliament and government, the name of the State, the status of the State, and the derivation of the powers of government from the people. These declarations appear in Articles II–VI inclusive:

Article II. The national territory consists of the whole island of Ireland, its islands and the territorial seas.

Article III. Pending the re-integration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that

[27] Figures given are those reported in *The Irish Press*, July 17, 1937.

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territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Eireann and the like extra-territorial effect.

Article IV. The name of the State is *Éire*, or, in the English language, *Ireland*.

Article V. Ireland is a sovereign, independent, democratic state.

Article VI. 1—All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.

2—These powers of government are exercisable only by or on the authority of the organs of State, established by this Constitution.

In these opening articles, de Valera undertakes to speak not only for Saorstát Eireann but also for Northern Ireland. The unilateral declaration with respect to the six counties known as Ulster has no legal effect upon their position in the United Kingdom. It did cause the to-be-anticipated political reaction of the majority dominant in Northern Ireland. The unity of Ireland may be regarded as a sincere aspiration on the part of the South, but partition is so deeply rooted in history, religion, and economics that the impact of Article II cannot be of much immediate effect. Partition is by no means a unilateral question, and no one knows this more thoroughly than de Valera. Article III is the logical consequence of the antagonism between Northern and Southern Ireland, and it postulates an indefinite period during which partition will continue. The name of the State is proclaimed to be Éire. At first, this was the case in both the Irish and the English texts of the constitution; but during the constitutional debates in the Dáil, de Valera accepted an amendment permitting the use of "Ireland" as the name of the State in the English translation.[28]

Although Article V declares that Ireland is a sovereign, independent, democratic state, the constitution contains a loop-hole permitting the continued association of Ireland with the British Commonwealth of Nations. This is to be found in Article XXIX, which declares that: "For the purpose of the exercise of any executive function of the State in or in connection with its external relations, the Government may to such extent and subject to such conditions, if any, as may be determined by law, avail of or adopt any organ, instrument, or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of in-

[28] *The Irish Press*, May 26 1937.

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ternational coöperation in matters of common concern."[28a] On the basis of this constitutional clause and the continuance of the Executive Authority (External Relations) Act, the intent to maintain the association of the sovereign, independent, democratic state of Ireland with the British Commonwealth of Nations is clear Whether or not this unilateral action on the part of Ireland to avail itself of the Crown for limited purposes is satisfactory to the United Kingdom and/or the Dominions of the British Commonwealth of Nations is another question.

In the committee stage of the debates on the draft constitution, Deputy Frank MacDermot, an independent with pro-British sympathies, moved an amendment making a clear declaration as to the status of Ireland in the British Commonwealth of Nations. This amendment read: "The Irish Nation hereby declares its free and equal membership as a sovereign State of the British Commonwealth of Nations and, so long as such membership continues, recognizes King George VI and each of his successors at law as King of Ireland." It was Mr. MacDermot's view that only by making the Crown an integral part of the constitution could they ever hope to reconcile the North and the South of Ireland. In reply, President de Valera maintained that the relation of Ireland to the British Commonwealth of Nations was too controversial a subject for inclusion in the new constitution. The position, according to de Valera, was that the connection with the British Commonwealth of Nations was maintained by an act of the Oireachtas. This could be set aside if the people elected a government to do so. If, on the other hand, the people wished to continue this connection, they might do so. Neither course would involve constitutional change. De Valera's view was one of resistance to any attempt to incorporate in the constitution a fixed policy with respect to external affairs.[29] The MacDermot amendment was defeated by a vote of 56 to 3. Fianna Fáil and Labor voted against the amendment; three independents supported it; and nine members

[28a] However, Article XXIX stipulates that every international agreement to which Éire becomes a party shall be laid before Dáil Eireann. Éire shall not be bound by any such agreement involving a charge upon public funds unless the terms have been approved by the Dáil. These limitations do not apply to agreements or conventions of a technical and administrative character. No international agreement shall be part of the domestic law of Éire save as may be determined by the Oireachtas.

[29] *The Irish Press*, May 26, 1937.

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of the Fine Gael party remained seated in the House while the division was taken.[30]

When the debates on the constitution were concluded on June 14, 1937, Mr. Cosgrave announced that he would urge the people to defeat the document. The reasons which he stressed, however, did not pertain to the failure of the constitution to affirm the position of Ireland in the British Commonwealth of Nations. He had already said in a public utterance that Fine Gael was satisfied that the new constitution did not of itself bring Ireland "outside the scheme of these associated states."[31] What he did do was to assail the new constitution for the powers which it gave to the prime minister whereby he could undermine the independence of his colleagues. He had previously attacked the grant of powers to the president. He also pointed to possible dangers to freedom of the press, of speech, and of the right of public meeting, and to possible discriminatory legislation against women under the new constitution. In closing the debates, de Valera expressed regret that the constitution was to be treated as an issue between the parties. He regarded the instrument as one drafted "by Irishmen for Irishmen."[32]

It is a long, political jump from the Treaty of 1921 to the Irish constitution of 1937. The English may have regarded the treaty as reasonably final, but it was too much to expect that Saorstát Eireann would settle into the same constitutional status as that of Canada simply because the treaty so stipulated. Canada was re-

[30] Later, Mr. Cosgrave, as leader of the Fine Gael opposition, made a public statement explaining the failure of Fine Gael to vote for Mr. MacDermot's amendment. The amendment, according to Cosgrave, was framed to assert a principle contrary to the adopted practice governing the relationship of the Crown to the members of the British Commonwealth. The Crown was, according to the preamble of the Statute of Westminster, the symbol of the free association of the members of the Commonwealth. Any change in the royal style or titles could be made only after agreement among the member-states of the Commonwealth. The MacDermot amendment did not propose to recognize the Crown as the symbol of free association. It recognized George VI as the king of Ireland. Fine Gael took its stand on the treaty and the agreements reached by Imperial Conferences with respect to the definition of the Crown in relation to the members of the British Commonwealth (*The Irish Press*, June 7, 1937). This technical and ingenious explanation aside, it is obvious that Fine Gael was in an unfortunate dilemma. Had Fine Gael voted for the amendment, it would have been open to pro-British charges in the ensuing Irish election. By failing to vote for the amendment, Fine Gael was open to charges of insincerity in its stand for the Commonwealth connection.

[31] *The Irish Press*, June 7, 1937.

[32] *Ibid.*, June 15, 1937.

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mote and loyal; the Saorstát was close at hand and rebellious. Canada had reached her position by a gradual evolutionary process. Nationalist Ireland had but recently flamed into revolt. To the Irish Republicans, dominion status fell too far short of the proclamation of the Irish Republic in 1916. In that Easter-week rebellion, the right of the people of Ireland to the ownership of Ireland and to unfettered control of Irish destinies had been proclaimed. The opening articles in the constitution of 1937 revert to that declaration. At the same time, Article XXIX and the Executive Authority (External Relations) Act of 1936 provide a grudging acceptance of association with the British Commonwealth of Nations. This association, according to de Valera's pronouncements, and now according to Irish law, is not one which flows from the contractual obligations of the Treaty of 1921. It is a status which is maintained by Ireland of her own free will. It is a status which may be changed by statute. It is a status which is not cast in the fundamental law, because, as de Valera holds, it is a controversial issue.

De Valera may be an enigma to some English statesmen, to Fine Gael supporters, and to extreme Republicans. In the light of Document No. 2 of 1922 and of the pressing necessities of Anglo-Irish relations, de Valera's constitutional moves of 1936 and 1937 are understandable. While claiming independence for Ireland, he simultaneously accepts a continuing association with the British Commonwealth of Nations. So the Irish question remains to plague the British Commonwealth of Nations as it once plagued the United Kingdom. A number of practical difficulties stand in the way of an Irish Republic not in association with the British Commonwealth of Nations. Paramount among these is the question of a united Ireland. The latter can never be achieved on the basis of a dissociated republic, unless some new and unforeseen changes occur in the temper of Ulster. Again, a dissociated republic would raise serious questions for Irish citizens who have been migrating to the United Kingdom by the thousands in recent years. Although Irish legislation of 1935 claimed that Irish citizens both within and without the Free State had national status only as such citizens, this could not deprive persons born in the Free State and migrating to British territories of their standing under British law as British subjects.[33] In view of present migration from Ireland to England

[33] A. B. Keith, *The Governments of the British Empire*, (1935), pp. 121–122.

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for purposes of employment, any action which would culminate in British treatment of Irish citizens in British territories as aliens would be embarrassing to the government of Ireland. Finally, this might not be an opportune time to cut adrift from the British Commonwealth of Nations, since recent years have been marked by the failure of the League of Nations to protect the rights of small states.

For further clarification of Anglo-Irish relations, de Valera would like an abrogation of Article VII of the Treaty of 1921. This provides for occupation in time of peace by British forces of harbors and other facilities which are set forth in the annex to the treaty. It further provides that the Irish Free State shall afford to His Majesty's Imperial forces "in time of war or of strained relations with a Foreign Power such harbour and other facilities as the British Government may require for the purposes of such defence as aforesaid." De Valera prefers to see these clauses abrogated, since they might make it impossible for Ireland to maintain her neutrality if the United Kingdom were at war. This is not an issue which de Valera can settle by unilateral action, and he has taken none.

The new constitution was accepted by the plebiscite of July 1, 1937, and, according to Article LXII, it goes into operation late in December, 1937, or on such earlier day as may be fixed by Dáil Eireann. The establishment of an independent Ireland in external association with the British Commonwealth can be accepted in English opinion only upon the thesis that freedom of dissociation follows from freedom of association under the Statute of Westminster. In this connection, an interesting paradox appears. The Irish Free State in 1924 registered the Treaty of 1921 with the Secretary-General of the League of Nations. This action was logical in view of the Irish claim that the treaty was of binding force internationally. To the registration of the treaty the British government objected on the ground that the Covenant of the League of Nations did not govern the relations *inter se* of the British Commonwealth. In view of this British claim that the treaty had no binding force in international law, how then was the Irish Free State, after the Statute of Westminster, bound by the treaty? The treaty was given the force of law by an Imperial act, and, under the Statute of Westminster, an Imperial act in its application to the Irish Free State might be abrogated by an act of that Dominion. The British pro-

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test of 1924 has eventually played into the hands of the Irish nationalists. On the other hand, the early Irish view that the treaty had binding force internationally might now logically be abandoned in the interest of Irish freedom of action under the Statute of Westminster.

Aside from the dispute over the binding force of the treaty in international law, two major issues might arise between Ireland and the United Kingdom. One would be the contention that the treaty as an agreement between the Imperial government and a *de facto* Irish government was still binding inter-Imperially between the United Kingdom and Ireland until abrogated by the assent of the two governments. Another would be the contention that freedom of dissociation does not follow from the Statute of Westminster; that any changes in the succession or the royal style and titles require constitutionally the consent of all of the Dominions and the United Kingdom; and that, as a result, the sovereignty of the king, internally as well as externally, is an essential attribute of the relationship between members of the British Commonwealth.

Practically, however, how are such views to be maintained by the United Kingdom short of a resort to force of arms to compel the acquiescence of Ireland? The Irish Free State abolished the oath of allegiance to the king, and it abolished the governor-general, the representative of the king, in its internal affairs. Éire will have a republican president and will be externally associated with the British Commonwealth by statute. For practical purposes, this means that the king, acting on the advice of the government of Ireland, will have a formal part in the appointment of diplomatic and consular representatives and in the conclusion of international agreements. To date, the British government has given no evidence of its attitude toward the self-determined state of Éire other than acceptance of a *fait accompli*. Resort to armed force, used by England as late as 1921 in Ireland, seems now to be out of the question, unless it should be necessary to protect the government of Northern Ireland.[34]

[34] For arguments against the right of dissociation under the Statute of Westminster, see the views advanced by A. B. Keith, in reviewing Henry Harrison's *Ireland and the British Empire* (1937), in the *Manchester Guardian*, April 27, 1937. On the controversy between the United Kingdom and the Irish Free State over the registration of the treaty in 1924, see P. J. Noel Baker, *The Present Juridical Status of the British Dominions in International Law* (1929), pp. 305–307.

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The Progress of Administrative Reorganization in the Seventy-Fifth Congress. Congress adjourned on August 21 without enacting any part of the program for administrative reorganization and management of the federal government recommended by the President's Committee on Administrative Management, and endorsed by the President in a message to Congress on January 12. The program was sidetracked until late in the session by the court reform proposal. While no action was taken, all of the major recommendations of the Committee have been incorporated in bills which have been reported out for passage in both houses, and two bills were passed by the House. The other bills are on the calendar for consideration at the next session, and will not have to go through the original committee stage again. Presumably these measures will receive early attention when Congress meets, and it seems probable that a large part of the program will become law.

The Senate bill designed to carry out the President's program, S. 2970, was introduced by Senator Byrnes, who succeeded Senator Robinson as chairman of the Senate Select Committee on Government Organization. The four House bills are as follows: H.R. 7730, introduced by Mr. Robinson of Utah, providing for six administrative assistants to the President (passed in the House); H.R. 8202, introduced by Mr. Warren of North Carolina, authorizing the President to reorganize the executive agencies and creating a new Department of Welfare (passed in the House); H.R. 8276, introduced by Mr. Vinson of Kentucky, relating to accounting and auditing; and H.R. 8277, introduced by Mr. Meade of New York, reorganizing the civil service administration and extending the classified civil service and the Classification Act.

The following is a summary of the single Senate and four House bills, which, in the main, cover the same ground and contain similar provisions. Exceptions and differences are indicated.

Administrative Reorganization. The President, after investigation, is authorized to reorganize the executive agencies by executive orders, under provisions almost identical with those of the Economy Act of 1932, as amended in 1933. The House bill introduced by Mr. Warren (H.R. 8202) merely reënacts the former law, with specified exceptions. All orders must be submitted to Congress while in session and are not effective until 60 days thereafter. The Senate bill provides, in addition, that if Congress adjourns before the expiration of 60 days, the order goes over until the next session, and does not become effective until 60 days after the opening of the session. In the House bill, the authority runs for two years, in the Senate bill for three years, from the date of enactment.

In both bills, certain agencies are exempted from the authority of the

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President, although the 1932 act carried no exemptions. In both, the regulatory commissions are exempted. The House bill, however, excepts from the exemption the "function of the preparing of estimates of appropriations," and also amends the Budget and Accounting Act specifically to include the independent regulatory commissions within the agencies subject to the budgetary provisions. Under the House bill, the President presumably might place an independent regulatory commission within a department for supervision and review of its budget estimates prior to submission to the Bureau of the Budget.

In addition to the independent regulatory commissions, the House bill also exempts the Engineer Corps of the Army, the Coast Guard, the General Accounting Office, and the United States Tariff Commission. The Senate bill exempts also the Board of Tax Appeals, the District of Columbia, the Board of Governors of the Federal Reserve System, the newly created General Auditing Office, the Engineer Corps of the Army, and the Mississippi River Commission.

Both bills provide for a new Department of Welfare. The Senate bill changes the name of the Department of Interior to Conservation, and creates a National Resources Planning Board to take over the functions of the present National Resources Committee set up by executive order.

Civil Service. The Senate bill and the House bill on civil service (H.R. 8277) both abolish the existing Civil Service Commission and create instead a single Administrator to be appointed by the President, by and with the advice and consent of the Senate, with a salary of $10,000 a year, and serving for an indefinite term. In addition to the duties now placed upon the Civil Service Commission, the Administrator is directed to "prepare and recommend to the President plans for the development and maintenance of a career service in the federal government," to plan, establish, and supervise training programs, and to carry on investigations of personnel matters. The House bill provides for a Civil Service Board of seven members, serving without salary but with an allowance of $50 a day, not to exceed $1,500 a year. This board is given investigatory and advisory duties, and is required to make annual reports to the President and to Congress upon the quality and status of the personnel administration of the federal government, to make recommendations for the improvement of personnel administration, to propose new rules, and to review and comment upon proposed rules and regulations submitted to it.

Both bills authorize the President to extend the classified civil service to any office or position within the government, including corporations owned and controlled by the government. This provision will enable the President to cover into the classified civil service positions in the new agencies which have been specifically exempted from civil service by acts of Congress. Positions which are filled by presidential appointment, by

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and with the advice and consent of the Senate, are excepted in both bills from the President's authority to extend the classified civil service.

Incumbents in positions covered into the classified civil service attain civil service status only upon (1) certification by the head of the agency that they have served with merit for six months prior to the executive order, and (2) upon passing a non-competitive examination conducted by the Civil Service Administrator.

The Senate bill provides that if the President finds that any position of head of a bureau, division, service, or similar agency is policy-determining in character, the position shall be filled by presidential appointment, by and with the advice and consent of the Senate. This authority expires at the end of three years. It may be noted that the President now has the authority to take any such position out of the civil service.

Both bills authorize the President, after such investigations as he may order, to extend the Classification Act of 1923 to positions in the field. Branches of the service which have special classification systems, such as the Postal Service, the Coast Guard, the Public Health Service, and the Foreign Service, are excepted. The President is vested with discretion to set up new classification services or grades for positions which may not be fairly and reasonably allocated to existing grades, and to modify the salary rates in the case of unusual positions, such as those involving undue hardships or hazards.

The reports accompanying these bills are as follows: Senate Report No. 1236, *Government Organization;* House of Representatives Report No. 1177, *Authorizing the President to Appoint Administrative Assistants;* H. R. Report No. 1487, *Reorganization of the Executive Departments;* H. R. Report No. 1587, *Civil Service Administration;* and H. R. No. 1606, *Amendment of the Budget and Accounting Act.* These reports are obtainable from the chairmen of the respective committees.

Accounting and Auditing. The Vinson bill in the House (H.R. 8276) and the Senate bill provide for the separation of the auditing and the "controlling" functions which are now united under the Comptroller-General, and for return of the "controlling" functions to an officer responsible to the President. Both bills create a new General Auditing Office, whose functions and authority would be limited to making a post-audit and reporting thereon to Congress. This office would be headed by an Auditor-General, appointed by the President for a fifteen-year term, and removable only by Congress. The Auditor-General would thus enjoy the same position of independence and permanence as that now granted to the Comptroller-General, and would be directly responsible to Congress.

Under the Senate bill, the "controlling" functions of the settlement of accounts and claims, the rendering of advanced decisions, and the conduct

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of pre-audits are transferred to the Bureau of the Budget, while the prescribing of accounting systems and records is transferred to the Treasury. The General Accounting Office is abolished. The Vinson bill, on the other hand, retains these functions in the General Accounting Office, but places the head of the office, the Comptroller-General, under the President by striking out the statutory provisions which give him a fifteen-year term and provide for removal only upon joint resolution of Congress.

Both bills provide that the audit shall be decentralized and conducted as promptly as possible after payments, and prior to settlement. The executive officer in charge of settlements would not be bound by the findings of the Auditor-General, but if an account is not settled in accordance with the findings of the Auditor-General, he is required by the bills to report his exceptions to Congress. This corresponds to the British practice under which the Treasury may overrule the Auditor and Comptroller-General, though in practice rarely does so. Both bills provide that the decisions of the comptrolling officer shall be subject to appeal to the Attorney-General upon questions of jurisdiction.

The Byrnes bill creates a Joint Committee on Public Accounts in Congress to receive the reports of the Auditor-General and to make such investigations and recommendations as it deems necessary. This committee would consist of twelve members each from the House and the Senate, divided equally between the two major political parties. The House bill does not create a special committee to receive the reports of the Auditor-General, but merely provides that they shall be referred to the appropriate committees, which are authorized to subpoena witnesses and to conduct investigations.

Planning Agency. The Senate bill creates a permanent planning agency directly under the President—the National Resources Planning Board. This board is to consist of five members appointed by the President by and with the advice and consent of the Senate. Members are to be compensated at $50 a day, but not to exceed 30 days in any two consecutive months. The board would take over the functions of the existing National Resources Committee. No provision for such an agency is made by the House bill.

Administrative Assistants to the President. The Senate bill and the bill introduced by Representative Robinson in the House (H.R. 7730) authorize the President to appoint not to exceed six administrative assistants at a salary not to exceed $10,000 a year.

It will be noted that these measures follow in the main the recommendations of the President's Committee on Administrative Management. They depart therefrom in the following particulars: (1) no provision is

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made in the Senate bill for a Civil Service Board; (2) the Civil Service Administrator is not to be selected as a result of a competitive test; (3) the civil service is not extended upward to the higher positions; (4) salaries in the higher brackets are not increased; (5) the independent regulatory commissions and a few other independent agencies are removed from the authority of the President to reorganize by executive order; (6) the controlling powers are placed in the Bureau of the Budget by the Senate bill, instead of directly in the Treasury as recommended, while under the House bill they are left with the Comptroller-General, who is made responsible to the President; (7) no provision is made for the proposed Department of Public Works; (8) the House bill does not provide for a National Resources Planning Board.

It may be of interest to review briefly the consideration of the program by Congress. The House and Senate Select Committees on Government Organization, to whom the report of the President's Committee was referred, held hearings in executive sessions during February, March, and April. These hearings have since been published (*Hearings Before the Joint Committee on Government Organization*, 75th Congress, 1st session). The members of the President's Committee on Administrative Management—Louis Brownlow, chairman, Charles E. Merriam, and Luther Gulick—testified in support of the President's program. Mr. A. E. Buck, a consultant of the President's Committee, also testified on the financial aspects of the program. Mr. Lewis Meriam and Mr. Daniel Selko, of the Brookings Institution, testified on those financial aspects of the program on which the recommendations of the Brookings Institution differed from those of the President's Committee.

The late Senator Robinson introduced a single bill (S. 2700) on June 23 to carry into effect the President's reorganization program. Hearings were held on this bill by the Senate committee under the chairmanship of Senator James F. Byrnes, who succeeded Senator Robinson, during the first weeks of August. Messrs. Charles E. Merriam and Luther Gulick appeared in support of the principal provisions of the Robinson bill. The supporters of the measure made no effort to call other witnesses, although several who had asked to be heard testified in general support of the bill.

Principal opposition to the bill was voiced by representatives of forestry associations, the independent regulatory commissions, and the General Accounting Office. The forestry witnesses opposed the change of name of Interior to Conservation, fearing that this might lead to a transfer of the Forestry Service out of the Department of Agriculture. They advocated also specific exemption of the Forestry Service from the authority of the President to make transfers. The witnesses from the independent regulatory commissions, notably Mr. Joseph B. Eastman of

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the Interstate Commerce Commission, opposed the grant of authority to the President to transfer or to reorganize these commissions.

The Acting Comptroller-General and several of his division chiefs appeared in opposition to the features of the bill affecting that office and explained the detailed workings of the present system. Chairman Mitchell of the Civil Service Commission appeared in opposition to the abolition of the Civil Service Commission and the creation of a single Civil Service Administrator. Many witnesses vigorously opposed the provision in the Robinson bill which might have led to taking out of the civil service several hundred bureau chiefs and other higher administrative officers.

After the conclusion of the hearings, Senator Byrnes introduced a new bill which had previously been agreed upon by the Senate committee (summarized above), and reported it out for passage in the closing days of the session. While it was not called up for consideration, it is assumed that it will be acted upon early in the next session.

The House select committee headed by Representative John J. Cochran of Missouri appointed four subcommittees in May to consider the major features of the program, namely, (1) administrative assistants to the President, (2) reorganization and new departments, (3) civil service, and (4) accounting and auditing. These subcommittees prepared the four House bills summarized above, all of which were reported out for passage, and two of which were passed by the House.

The first measure reported out was the bill authorizing six administrative assistants to the President. The bill was opposed by the Republican leaders, resulting in a debate and vote along partisan lines in the House. The Republicans ridiculed the measure as insignificant. The Democratic leaders pointed out that this was the first of a series of four bills to carry out a comprehensive program. The measure carried by a vote of 260 to 88.

The second bill reported out in the House was the Warren bill (H.R. 8202), which reënacted the reorganization provisions of the Economy Act of 1932, as amended in 1933, and created a new Department of Welfare. The debate was also largely along partisan lines. The principal opposition of the Republican leaders was against the creation of a welfare department. The bill was passed by an overwhelming vote. Mr. Taber, the senior Republican member of the Select Committee on Government Organization, admitted the necessity of delegating to the President the authority to reorganize the administrative agencies.

While it is not the purpose of this note to discuss the merits of the program submitted to Congress, or of the bills which have been reported out for passage, brief mention may be made of some of the features which have proved most controversial. The recommendations of the President's Committee that the President be authorized to reorganize the administra-

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tive agencies by executive order has been generally accepted as the only practicable manner in which administrative reorganization can be accomplished. Few persons in Congress or out believe that it is possible for Congress itself to enact the necessary detailed legislation in the face of the vigorous opposition of government agencies and their friends opposed to any change. The bills introduced, however, are not as broad as recommended in that (1) they are for a limited duration, (2) executive orders must lie before Congress for 60 days prior to becoming effective, and (3) numerous independent agencies are given an exempted status.

The recommendation of a new Department of Public Works has received little support in Congress, although there has been little open opposition. The creation of a Department of Welfare has been vigorously opposed on the ground that it will make permanent the relief activity of the government.

There has been only praise publicly for the recommended extension of the civil service, but this proposal has not been warmly received in Congress. In the end, it is likely to be curtailed more severely than any other part of the program. The recommendation that the civil service be extended upwards has already been dropped, and that of a higher salary scale for top administrative officers has not received any consideration. The recommendation for the creation of a single civil service administrator in the place of the existing commission has called out some criticism, but, in general, friends of civil service are in favor of the change.

The proposal which has stirred greatest opposition, perhaps, is that the "executive" or "controlling" functions of the Comptroller-General be vested in an officer responsible to the President. Back of this opposition is the feeling that there should be some independent check upon the Administration in the expenditure of public funds, and that it is the function of Congress to set up an independent officer to interpret and enforce its appropriation acts. There has been considerable confusion between auditing and controlling, it being charged that the President's Committee recommended doing away with an independent audit. The President's Committee recommended that there should be an independent audit carried on by an officer directly responsible to Congress, but that this officer should not exercise current control over the fiscal affairs of the government, as at present. The Committee regarded current control as an executive function of management, which must be located within the executive branch to be exercised effectively and with consideration of administrative problems. The Committee also pointed out that under the Constitution the executive power is definitely vested in the President, who is charged with the duty of seeing to it that the laws are enforced. The recommendations of the President's Committee in this regard were designed (1) to bring about more effective internal financial control and

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management, (2) to avoid the difficulties and delays which have resulted under the existing system, and (3) to establish more effective responsibility of the executive branch to Congress through a truly independent audit. This issue will be threshed out at length in the next session of Congress when the Byrnes and Vinson bills are under consideration.

Another proposal which has been opposed strenuously is that something should be done about the growing number of independent regulatory commissions which are largely removed from executive direction and supervision. Most of these commissions regard themselves as agents of Congress outside of the executive branch. The President's Committee "viewed with alarm" the creation of numerous independent commissions exercising wide regulatory powers over our economic life, and feared that the time is not distant when we may have fifty or a hundred such agencies, effectively destroying the executive authority. In its recommendations, however, the Committee was not so specific. It advocated that these commissions be brought within the executive departments where appropriate departments exist, but did not specify to what extent the commissions should be made subject to the head of the department. It was suggested that "one possible solution" was to place the commissions within departments, and to separate their administrative and executive duties from their quasi-judicial functions. Under this plan, the commissions would be entrusted with the quasi-judicial functions independent of executive control, and the executive and administrative functions would be placed under the supervision of the department.

This recommendation has been opposed vigorously by the independent regulatory commissions themselves and by their friends on the following grounds: (1) these commissions are agents of Congress, and are not a part of the executive branch; they have been set up to fill in the details of legislation and to carry out the policies adopted by Congress; (2) to place them within an executive department would subject them to political pressures and control by constantly changing, politically selected, cabinet officers, while at present they are removed from partisan influence; (3) the work of these commissions is of such a nature that they should not be made subject to any supervision or direction from the President; and (4) to place them within the executive branch would greatly hamper and impede their work.

This issue, for the present, is largely settled by the Senate and House bills, which exempt the commissions from the reorganization authority of the President. The inherent problem, however, is not settled. If the present trend of constantly increasing the independent regulatory commissions continues, as appears likely, the problem will become more and more pressing as time goes on.

No mention has been made of the special studies by the staff of the

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President's Committee on various aspects of administrative management in the federal government, such as personnel administration, financial administration, the exercise of the rule-making power, governmental corporations, departmental management, and others. These are to be reviewed in a later issue of the REVIEW. Nor has mention been made of the reports prepared by the Brookings Institution for the Byrd Committee of the Senate (see August REVIEW, pp. 700–702). The Brookings Institution studies describe and analyze the activities of the government under such headings as financial institutions, agriculture, public welfare, transportation, regulation of business, etc. They indicate in detail existing overlapping and duplication of activities and suggest specific transfers and consolidations. Several measures have been introduced by Senator Byrd to carry out these recommendations, but have not been reported out of committee.

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Public Service Training in Universities. Political scientists in this country have for many years been concerned with the problem of preparing young persons for public service careers. Considerable thought and discussion were devoted to the subject at numerous conferences and conventions in years before the entry of the United States into the World War, and some progress was made toward adapting university curricula to such principles as were evolved. The revival of a fresh interest in the matter evidently dates from around 1930, one of the major signs having been the Conference on University Training for the National Service held at the University of Minnesota in 1931. Since that time, the problem has received constantly increasing attention at meetings of the American Political Science Association, the Civil Service Assembly, the National Municipal League, the National League of Women Voters, and special groups such as that sponsored at Princeton, New Jersey, in 1935 by the Public Administration Clearing House.

Even more significant has been the recent creation and expansion in many institutions of special schools, programs, and courses designed to meet the obligations of higher education in providing better trained personnel for our government services. A survey conducted in 1936 indicates that out of 126 universities and colleges which responded to questionnaires 115 are engaged in public service training activities, 58 considering their programs general only, 50 considering theirs both general and specific, and 4 considering theirs specific only.[1]

[1] Clarence E. Ridley and Lyman S. Moore, "Training for the Public Service," *Annals of the American Academy of Political and Social Science* (January, 1937), Vol. 189, p. 129.

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In the midst of this growing emphasis upon training for the public service, it is strange to find that so few systematic analyses have been made of the precise personnel needs in government employment today as a basis for deciding what the most effective rôle of university training can and should be. The subject was broached at the Minnesota conference in 1931, but such studies have been very rare.

Considerable discussion takes place with respect to the desirability of creating a special Administrative Service in the federal classification scheme, patterned after the British system.[2] But little is to be found in the way of scientific investigation of the present administrative positions in the service, the actual duties and requirements involved, and the feasibility of dealing with them apart from the functional or "subject-matter" phases of the operations which are administered. It is pertinent to mention that, in a study of the New York City civil service,[3] the writer has noted that exceedingly few openings appear in administrative positions which do not involve the application or knowledge of some professional technique. An analysis of entrance opportunities in the municipal service from 1925 to 1935 indicated that, out of an annual average of 687 appointments (almost entirely in the Competitive Class) of interest to college-bred applicants, only 13 appointments during the entire ten years could be construed as unrelated to any special profession. The only two position titles involved were "civil service examiner" and "examiner (board of education)", both of which required considerable specialized experience (ten years in the latter case) to qualify for entrance. Probably on account of this being a municipal service, the great majority of competitive appointments were in the engineering and architectural fields. Many such technical positions, however, involved or led to other positions that involved administrative responsibility.

Higher general administrative posts, of course, were found in the groups exempt from the formal competitive merit system, but appointments to these numbered very few per year, and in no case, even when filled on an informal merit basis under Mayor F. H. LaGuardia, could these advanced jobs be looked upon as offering immediate opportunities to persons with undergraduate or graduate training in general public administration but without experience in or out of the public service. The only possibilities for young graduates so trained to enter the largest of our municipal services appear to be in that group of positions (some 6,620 in 1935) with the ambiguous title of "clerk," to which an average of 252

[2] See Leonard D. White, *Government Career Service* (University of Chicago Press, 1935), in which a federal administrative corps is proposed; for a different point of view, note Lewis Meriam, *Public Service and Special Training* (University of Chicago Press, 1936).

[3] *Training Career Public Servants for the City of New York* (New York University, 1936), Chap. 5.

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annual appointments were made during the ten years studied. No doubt some of these appointments were to positions of a junior administrative or sub-administrative character or gave promise, through later promotion, of advancement to positions of such nature. Chronic unemployment may tend to make even the better paid clerical positions and other non-professional positions attractive to college graduates, but many of the above clerical appointments were to positions paying salaries of less than $1,200 annually. The general conclusion is unavoidable that persons with training in public administration have little opportunity, as compared with those trained as engineers, doctors, scientists, or technicians, for finding administrative careers in the New York City service.

Meanwhile, many universities are turning out increasing numbers of persons well schooled in public administration, usually without relation, however, to any special technical field, such as engineering, natural science, forestry, medicine, law, or economics. Few professional or technical schools have gone very far in relating their special fields of knowledge to social or governmental problems. Although general public service training is not necessarily being wasted or misdirected, it is being given without adequate knowledge of what the public service needs and can use.

What organized knowledge do we have of the annual opportunities for entrance into the federal service and into our large state and municipal services according to the occupational nature of the work? How much do we know of the ultimate chances for promotion of entrants into the service? What are the possibilities for extension or definition of these opportunities by improvement and extension of merit systems and revision of classification plans? Recognition of the usefulness of research in finding the facts before solution to a problem is ventured adds weight to the general observation that programs of university training for the public service should be entered into very cautiously before adequate systematic knowledge is acquired of past and probable future public personnel demands.

Research directed toward finding the answers to questions such as those above has been comparatively meager. It is true that the facts are not always clear from published records. Yet, every United States Civil Service Commission report should be a fruitful source as a start in determining the trend of civil service appointments to sundry vocations, to say nothing of the fact that necessary records are usually accessible and usable in most of the important municipal and state civil service offices. It is largely a problem of assembling the facts, assimilating them, and making considered interpretations of their significance. Undoubtedly there have been special inquiries into the opportunities in specific branches of the public service or in certain localities, but comprehensive studies are unknown.

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Meanwhile, what is the proper rôle of university training to be? Must colleges await exhaustive study of the situation before providing certain forms of public service training?

First of all, it is clear that at the undergraduate level the institutions of higher learning should emphasize courses in American government and public administration as necessary adjuncts to training in almost every field, even in liberal arts curricula where occupational specialization is not an objective. However, it is in the technical schools and curricula, where such vocational specialization is usually the main goal, that political science courses of this sort are especially needed as an indispensable complement to the concentration, often quite narrow, in the subject-matter of some technical field. It must be made obvious to students whose minds do not turn to the social sciences that, even if they have no intention of practicing their specialty in any branch of government service, fate may land them there, because government is a growing employer of all specialties. More important, such training is highly essential for intelligent citizenship. It is the groundwork and the most effective beginning point for genuine adult political education. Sound elementary courses in American government alone play an unmeasured but unquestionably important part in producing more sophisticated and less gullible citizens. Should colleges in a democracy consider their graduates "educated" if they do not come out wiser citizens and voters? Justification for elementary training in government and public administration must rest increasingly upon the objective of good citizenship as well as that of preparation for the public service.

For these reasons, few can disagree with the establishment or extension of minimum requirements for political science training for undergraduates in our universities regardless of vocational aspirations. The conviction that a general college education should be viewed as something much broader than mere preparation for an occupation is all the more reason for emphasis on public problems and citizenship in college curricula. The public is the gainer when both the technical man in government employ and the citizen on the outside have a broader understanding of the operations and problems of the public service.

A second observation is that special training in public administration above the undergraduate level must be understood to have important limitations as vocational training. Until we know more about the opportunities for absorption in the public service of persons with master's or doctor's degrees in public administration, it would seem to be the proper step for universities to make clear that their graduate courses in public administration (including internships) do not alone or as yet open a direct road to a career in government service. It is understood, for example, that the faculty of the School of Citizenship and Public Affairs at Syracuse University encourages students taking its two-year graduate

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course, which leads to the degree of master of science in public administration, to specialize as much as possible in some one field in order to qualify for entrance into a satisfactory place in the public service. The commission appointed by President Conant of Harvard University to prepare recommendations for the organization of the new Graduate School of Public Administration at that institution has wisely urged that graduate pre-entry training for public service for non-professional students be started no sooner than September, 1938, and that the number of students be very small and the candidates carefully selected. "Nothing," said the commission, "could be more unfortunate than that the school should turn out graduates for whom positions in the public service are not available."[4]

Certain New Deal agencies have manifestly drawn liberally in recent years upon college graduates with political science or other social science training, but there is every reason to believe that such opportunities not only have passed their peak but will progressively decline from the high point of filling new and growing organizations to a considerably lower and more stable point as these organizations settle down to their permanent place in the government scene. Even with high hopes of adoption of career service principles as evolved by the Commission of Inquiry on Public Service Personnel, it is doubtful whether advanced training in public administration, apart from technical occupational training, will ever result in placing many men in public service fields other than in the special "staff" agencies or functions, particularly personnel, budgeting, office management, and coördination, which are significant mainly in the large organizations and which together compose an exceedingly important but relatively small portion of government service.

Nevertheless, the universities deserve to have meaningful statistics at hand regarding the number and types of positions or channels of activity in which public administration graduates may have a reasonable hope of being placed and of finding an opportunity for a stimulating and satisfying career. Such facts may reveal that the supposition that opportunities would be limited largely to the "staff" functions is too conservative. So far as any present studies have shown, however, the chief opportunities for college people in government service still seem to be for those technically trained. In any event, until a larger portion of the ground is covered and more fully representative facts are known, graduate training in public administration should be confined to those larger collegiate institutions which have adequate staffs, which are located close to important local, state, or national administrative centers, and which are in a position to integrate public service training effectively with the rest of the univer-

[4] "A Graduate School of Public Administration at Harvard University: Committee Recommendations," in this REVIEW, Vol. 31, p. 318 (Apr., 1937).

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sity program and with the needs of some part of the public service close at hand.

Among important universities which have already in the past two or three years established or expanded their programs of graduate pre-entry training in public administration are: American, California, Chicago, Cincinnati, Columbia (Institute of Public Administration), Wayne (Detroit Bureau of Governmental Research), Harvard, Kentucky, Michigan (Institute of Public and Social Administration), Minnesota, New York (Division of Research in Public Administration), North Carolina, Ohio State, Oregon, Princeton (School of Public and International Affairs), Southern California, Stanford, Syracuse (School of Citizenship and Public Affairs), Texas, Virginia, Washington, and Wisconsin. Another example is the National Institute of Public Affairs, which coöperates with collegiate institutions in Washington, D. C., to provide graduate public administration courses as part of the internship program of training for its annual group of about 30 college graduates. These programs are in addition to the schools and courses, which are usually longer established, in these institutions and others concerning some special public field such as foreign service, library administration, forestry, public health, social work, police administration, and city planning. Although the above may not be an exhaustive list, it is sufficient to show that the field of graduate training in public administration is probably approaching the saturation point.

What has been said thus far relates entirely to pre-entry training for the public service. A third point as to the appropriate rôle of university training in the expanding problem of public administration relates to post-entry or in-service training. Without waiting to secure the further knowledge needed for the proper delineation of pre-entry training programs, many universities are now making, and can continue to make, their most effective contribution in this field of training (both graduate and undergraduate) for present employees in government service. Obviously, such activity is almost entirely limited to schools which are located in large cities, state capitals, or the national capital. Leaders in public administrative agencies are laying more and more stress upon the values of in-service training, many phases of which can best be provided by the nearest academic institutions.

Among those universities carrying on significant programs of training especially for public employees are: American University, with its School of Public Affairs, and George Washington University, which together reach several thousand federal employees annually in Washington; the College of the City of New York, with its evening courses at the School of Business and Civic Administration, all of which are open to and many of which are offered especially for municipal employees; Northwestern

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University, with its annual short course for Evanston traffic officers; the University of Minnesota, which offers fellowships to public officials who can secure leave for a full year of study at the University; and the University of Southern California, with its Civic Center at the Los Angeles City Hall and its annual conference of public servants and academic men in the Los Angeles area for the Public Administration Short Course. It is also significant that the recommendations for the Littauer School at Harvard call for fellowships for public officials on leave who would spend at least a year at the University.[5] An interesting development is the coöperation of the University of Tennessee and the Tennessee Valley Authority in supporting a supervisor of training in public administration who teaches classes and plans programs which are available to both university students and TVA employees. No doubt other institutions are engaged in training public employees, but, on the whole, comparatively few have laid emphasis upon this phase of public service training.

Although in some ways in-service training is definitely a governmental responsibility,[6] there are cogent reasons in support of university participation in fulfilling in-service training needs. Certainly public-supported institutions should share this responsibility. Furthermore, so far as much formal course work is concerned, it is usually more sensible and economical for a public agency to draw upon the teaching staff and facilities of a near-by collegiate institution, even if the agency pays the necessary fees for its employees who take such courses. As commendable as their programs are, it cannot be assumed that quasi-public organizations, such as state leagues of municipalities, the Municipal Training Institute of New York State, or the International City Managers' Association, can or should cover all the in-service training activities not carried on directly by public agencies themselves.

In-service training seems to serve many desirable purposes at once. It helps to prepare employees for the assumption of new and greater responsibilities, thereby increasing the supply of promotable personnel within the service. It assists in the improvement of employee efficiency, morale, and interest in the organization and work. It offers opportunities for broadening the perspective of men with training and background confined to technical fields who find themselves assigned to posts that involve

[5] *Idem.*, p. 317.

[6] An example in which the far-flung character of a public agency's work makes in-service training more clearly the primary responsibility of the agency itself, rather than of general educational institutions, is the United States customs service. It is significant that an anonymous customs employee, working on the Canadian border, has publicly protested against the lack of training in his establishment, which practically closes all opportunity for advancement to himself and his colleagues. "Your Civil—and Uncivil—Servants," *Harper's Magazine*, Vol. 174, p. 505 (Apr., 1937).

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many perplexing administrative duties. In all such aspects of in-service training, the university can play an important part by making easily available to public employees certain regular courses and such special courses as are designed in conjunction with public personnel officers. The university can even participate in certain phases of recruit training, although much of the necessary training of new recruits in functions peculiar to the public service or to individual departments (such as police and fire-fighting courses for initiates) can best be left to the public agencies themselves. Universities conveniently situated can perform their most important public service training function at present by concentrating on those persons already in the service, because the effects of such a program may be immediately felt in government offices and because these institutions can fit their services to specific local needs and opportunities and can observe the results at first hand.

On the basis of these general observations, the conclusion seems clear that the university should be in possession of broad and systematic analyses of the personnel demands of government at all levels before going any deeper into the field of pre-entry training for public administration as such. As a necessary concomitant of undergraduate training (general or specialized), its courses in political science and public administration should be given with a more definite view to preparation for responsible citizenship, caution being exercised as to their practicability for specific government employment. With employment opportunities limited, or at least not thoroughly understood, public administration training at the graduate level can most profitably be left to a comparatively few major institutions already suited to the promotion of such training. It is in the field of in-service training that the universities now have their largest and best opportunity to coöperate in making public employees "public service conscious" and in assuring the country better trained government personnel.

Meanwhile, there is a challenging opportunity for research to ascertain what types of trained personnel and what numbers the public service can currently use and how the perennial supply of college-trained individuals can be most effectively articulated with these known personnel needs. Promise of some study in this direction has resulted from the recent gathering of representatives of 30 Eastern colleges and universities at the annual luncheon of the National Civil Service Reform League in New York in April, 1937, at which plans were formulated for a network of student chapters of the League to investigate and deal with problems of the civil service and of proper training for government work. In announcing the plan, Mr. Robert L. Johnson, president of the League, said: "Opportunities and types of positions in the service, particularly in the fields of social security, public works engineering, conservation of natural

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resources, and similar lines emphasized in recent years will be investigated."[7] It may be hoped that this movement will provide the necessary stimulus for broad and thoroughgoing research into the personnel needs of the public service.

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Germany's New Civil Service Act. Prior to the National Revolution of 1933, one of the foremost postulates guiding the conduct of German civil servants was that of political neutrality. The permanent public personnel—national, state, and local—was to consider itself, in the apt formulation of the Weimar constitution, "servants of the whole people, not of a party." Although imprudent legislative and executive measures taken during the republican era weakened rather than strengthened the principle of neutrality, it was effectively upheld by the disciplinary courts. Indirectly, the professional tenet of non-partisanship facilitated German bureaucracy's identification with a broadly conceived constitutionalism. At a time when the National Socialist vote had become the largest in national elections, organizers for the new creed still made least headway among the government personnel. Statistics published in 1936 disclose the fact that less than four per cent of all civil servants joined the national Socialist party before Hitler's rise to the chancellorship. As the incoming Reich cabinet was not slow to recognize the "impossibility"[1] of large-scale displacements, it resorted to transitional regulations in order to weed out overtly heterogeneous elements.[2] These regulations broke once and for all with the tradition of civil service neutrality. The demand of the hour was "political reliability." Another novel feature was the introduction of National Socialism's racial dogma into the German civil service law. Even so, it is safe to say that more than 90 per cent of the total public personnel was left in office, although the turnover has been far above the general average for the higher posts.

A complete recodification of the civil service law in accordance with National Socialist concepts, first announced as early as 1933, remained in the offing no less than four years. In the meantime, the former guaranties of tenure were left suspended. Under the Restoration Act of 1933, civil servants could be retired administratively without any specific

[7] *Christian Science Monitor*, May 1, 1937.

[1] Thus, Dr. Hans Frank (Reich Minister without portfolio), *Mitteilungsblatt des Bundes Nationalsozialistischer Deutscher Juristen und des Reichsrechtsamts der NSDAP*, No. 2, p. 37 (1935).

[2] Cf. Fritz Morstein Marx, "German Bureaucracy in Transition," in this REVIEW, Vol. 28, pp. 467 ff. (June, 1934).

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charges should the interest of the service or the simplification of public administration necessitate it. It is noteworthy, however, that in the past two years this provision has been utilized with decreasing frequency against politically suspect officials. It throws some light on the change of motives within the executive hierarchy that recently personnel officers, although by virtue of a ministerial decree now all good National Socialists, were expressly instructed not to apply the law to "old party members"[3] —for whom it was manifestly not written. But, apart from the virtual abolition of permanency, the government availed itself of another equally powerful means of control by redefining what is "unbecoming conduct" for a German civil servant. The term today covers aberrations as serious as these: buying at a Jewish store; expressing concern over the closing of denominational schools; pointing to any parallels between National Socialism and Communism; failing to protest against "insults" to National Socialism uttered in the course of church services. A public officer discharged on such grounds may, moreover, expect to find himself an object of attention from the secret state police. Clearly, a behavior suggesting political compliance has its tangible advantages. But it should be no less obvious that colleagues who were once intimates have come to watch each other as keenly as they guard themselves.

In a way, the new civil service statute (*Deutsches Beamtengesetz*) promulgated as a "cabinet act" early in 1937[4] represents a sincere endeavor to combat the atmosphere of distrust within the ranks of German bureaucracy. Official comment intimated that the past should now be forgotten. As to the present, however, those not yet prepared to support the new régime "from inner conviction" were again urged to "say so openly and bear the consequences."[5] Sound as the advice may be, it is hardly conceivable that it will be followed—after the pretense of "inner conviction" has been practiced for four years. But certainly the new law must have made eminently plain to every civil servant what place he was to fill in the Third Reich. "A professional public service," reads the preamble of the act, "rooted in the German people, permeated by the National Socialist faith, and linked by the bond of loyalty to the Leader of the German Reich and people, Adolf Hitler, constitutes a main pillar of the National Socialist state." Irrespective of the abrupt change of metaphor—a peculiar finesse of the German *usus modernus*—the phrase leaves no doubt about the sustained vigor of totalitarian tendencies. Public administration is not to become a peaceful haven for politically aloof technicians, but will remain one of the major battlefields of ideology.

[3] Decree of the National Minister of the Interior of May 11, 1936.

[4] *Deutsches Beamtengesetz* of January 26, 1937 (*Reichsgesetzblatt*, I, p. 39).

[5] Thus, *Reichsstatthalter* Karl Kaufmann, *Hamburger Fremdenblatt*, No. 291, October 19, 1936 (evening edition).

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"The civil servant must at all times and without reservations take his stand for the National Socialist state and be governed in his entire behavior by the fact that the National Socialist German Workers' party, in insoluble union with the people, is the exponent of the German concept of the State" (sec. 3). That he shall set an example of true National Socialist conduct, the act does not stipulate; more realistically, it demands that he be "a model of faithful fulfillment of duties for all citizens."

Not only from the angle of ideology is the *Deutsches Beamtengesetz* a consolidation measure. For the first time in the history of German bureaucracy, the civil service law has been incorporated in one single piece of legislation, supplemented by the *Reichsdienststrafordnung*[6] (regulating disciplinary procedure) and two extensive ordinances elaborating the general provisions in greater detail. As a national measure including in its scope every civil servant, whether employed by the Reich, the former states, or local authorities, the act testifies to the ascendancy of the unitary state. With few exceptions, its provisions are also applicable to the members of the judiciary (sec. 171). For Germany's police forces, however, the subsequent Police Officers Act of 1937 contains additional stipulations. Henceforth all civil servants are *Reichsbeamte* (national officials). Those in the actual employ of the national government are direct *Reichsbeamte;* all others, particularly the permanent personnel of the municipalities[7] and special authorities, have acquired the status of indirect *Reichsbeamte.* The law places "the German civil servant" at the disposal of "Leader and Reich"; he is proclaimed to be the "executor of the will of the state supported by the National Socialist German Workers' party. The state demands of the civil servant unconditional obedience and fullest discharge of his duties; in exchange, it guarantees him his life position" (sec. 1). He must "always be conscious of the increased duties imposed by his position," remain faithful "throughout his whole life to the Leader, who promises him his special protection,"[8] and never tolerate a "dishonorable activity" on the part of family members living in his home (sec. 3). These "general duties"—the act knows no longer of rights of

[6] The *Reichsdienststrafordnung* and the two *Durchführungsverordnungen* have become effective July 1, 1937, together with the *Deutsches Beamtengesetz.* (*Reichsgesetzblatt,* I, pp. 71, 669, 690. Application of the law to the permanent personnel of local authorities has been regulated in two subsequent ordinances (*ibid.,* pp. 729, 730). Cf. also the Police Officers Act of June 24, 1937 (*ibid.,* p. 653), the ordinance on outside activities of civil servants (*ibid.,* p. 753), and the special rules on appointment and dismissal procedure (*ibid.,* pp. 769, 771).

[7] This term, in the phraseology of recent German legislation, extends to all basic units of local government, urban and rural. On the Local Government Act of 1935, cf. Roger H. Wells, "Municipal Government in National Socialist Germany," in this REVIEW, Vol. 29, pp. 652 ff. (1935).

[8] In the language of the act, "*Treue bis zum Tode*"—an expression borrowed from the vocabulary of the soldier.

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civil servants—find their counterpart in subsequent sections (4–20) elaborating the "special duties" incumbent upon the public personnel.

First, when entering the ranks of the service,[9] appointees must solemnly affirm their allegiance to the "Leader of the German Reich and people, Adolf Hitler." To him, according to the formula of the oath, the official vows to be "faithful and obedient, to observe the laws, and to fulfill conscientiously his official duties." Second, no civil servant may, without the approval of his superior, concern himself with measures from which he or his close relatives might derive an advantage. Aside from this case, however, civil servants can be prohibited by special decree from exercising any function at all for up to three months—the famous "compulsory leave" so well remembered from 1933. Third, every civil servant "is responsible for the legality of his official acts." As long as he follows the directions of his superior in good faith, responsibility is assumed solely by the latter. But should the directions conflict "perceivably" with the criminal law, their execution would also be a disciplinary offense for everyone engaged in it. Only orders from the legal superior are binding; the law and such orders have precedence over "any other claim to obedience."[10] This last provision is a revealing comment on the vicissitudes of the one-party state. Yet it is doubtful whether it will help to eliminate the twilight zones of authority engendered by the dualism of party and government machinery. Fourth, even after having resigned or being retired from the service, a public officer must observe strict secrecy of all official matters explicitly declared confidential or "according to their nature" not intended for outside reference. He cannot consider himself relieved from this obligation on account of any conflicting interest, whoever may be concerned. As under the old law, court testimony relative to facts to be kept secret requires the consent of the superior. On the other hand, the writing of memoirs will become more difficult, since upon request not only all official documents, but also notes on inside occurrences or abstracts of reports, are to be returned.

The rules of official secrecy are, of course, not meant to interfere with the indispensable activities of that select group of civil servants who are at the same time minor officials of the National Socialist party. Whenever one of these has to pass judgment on the political attitude of a depart-

[9] The formulation suggests that the psychological effect of the oath would decrease in proportion to the frequency of its repetition. The act makes clear that no such repetition will occur in the course of the civil servant's career, regardless of promotion into higher offices or a transfer even from one local authority to another or from a municipal position to one in a central department or vice versa.

[10] According to the first *Durchführungsverordnung*, however, if a civil servant invokes a regulation adopted by party authorities against an order coming from his superior, the latter must examine with particular care the possibilities of overcoming the discrepancy.

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mental colleague at the request of a party agency, he can be confident that the path is free for perfect candor.[11] In fact, as a general rule, no superior is entitled to raise the question of "unbecoming conduct" in connection with party work of his subordinates.[12] Here, too, the party is a separate and impermeable organism. Accordingly, while every civil servant must give his full time to his official functions, and is consequently dependent on special consent even to accept the position of executor for the estate of a deceased friend, such consent is not required for (non-salaried) office-holding in the National Socialist party, its integral formations, or its affiliated organizations.[13] Volunteers of the latter category may count on a reasonable adjustment of their office hours. On the other hand, the act prescribes expressly that civil servants are obliged to work overtime "should conditions necessitate it." In this instance, they can also be instructed not to leave the place of their residence while off duty. In the choice of their living quarters, they are to consider the requirement of ready availability. In the interest of the service, their superior may demand that they locate themselves within a certain radius from the office. As to the accountability of civil servants, there is the time-honored graduated system of disciplinary penalties such as reprimands, fines, and for grave offenses dishonorable removal from office.[14] In addition, whenever actual damages have resulted, the guilty civil servant is liable to the unit of government employing him, while a citizen having suffered damage can recover from the government itself. Finally, the act provides for a neat device against practitioners of the "slowdown" as well as sluggards. Civil servants falling back in their work below reasonable standards may be deprived of the automatic raises under the Salary Act for up to two years in connection with each raise.

For every appointment (secs. 24–35), three conditions are basic. First, the candidate must satisfy the authorities as to the absence of racial obstacles. Second, the aspirant must prove his special qualification. Third, no one may count on an appointment unless the local party authority has given a favorable report on him.[15] In other words, "stamped National Socialists alone"[16] are admitted. Practically all of the junior officers

[11] The first *Durchführungsverordnung* provides that they be released from the duty of official secrecy for this purpose, unless important reasons of state stand in the way.

[12] This rule, too, is not laid down in the act itself, but in the first *Durchführungsverordnung.*

[13] One of the affiliated organizations is the National Association of German Civil Servants.

[14] The Civil Service Act leaves this entire field to the *Reichsdienststrafordnung.*

[15] The procedure is regulated in the first *Durchführungsverordnung.* The system of political reporting is superintended by the Substitute of the Leader in Party Affairs, Rudolf Hess.

[16] In the words of *Reichsstatthalter* Karl Kaufmann, *loc. cit.* (*supra*, note 5).

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at present in the probationary administrative service hold at least membership in the Storm Troop Detachment. But it is perhaps useful to recall that most of them did not join the Brown Shirts before 1933, when they responded to official urging while still pursuing their academic studies. For the younger generation to be politically duly accredited is, therefore, a fairly general accomplishment. As a rule, tenure is for life; those not appointed for life hold appointment "subject to recall." A life appointment presupposes that the candidate is at least 27 years of age (35 years in the case of women), and that he has received the prescribed professional training and passed the entrance examinations *or* has held office for five years. The significance of the latter alternative cannot be in doubt, for under the act appointments "subject to recall" may be made irrespective of professional requirements; civil servants "subject to recall," after five years of tenure, are consequently eligible for life appointment.

The bulk of the remaining provisions[17] are devoted to the guaranties of economic security of the civil servant—salary, compensation for "temporarily retired" officials (secs. 43–49), pension (compulsory retirement age is 65) including that of the widow and the children, and medical care in case of service accidents. These guaranties are implemented by the provision that claims arising from any such title may be pursued by the civil servant or his heirs before the administrative courts (secs. 142–147). No less important is the fact that the act recognizes the "duty of the state"[18] to concern itself with the general welfare of the civil servant (sec. 36)—for instance, to take all necessary precautions in the physical arrangement and equipment of the office in order to protect his health. As "frankness and confidence shall exist between the civil servant and his superior," grievances may find a sympathetic ear, so that in many cases resort to the complaint procedure (sec. 42) will be rendered unnecessary. But whether frankness and confidence will ever arise between the old-timer in the public service and the brisk political missionaries dispatched into it by the National Revolution is an entirely different question.

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[17] The act has 184 sections.

[18] Koenig, "Zur Rechtsprechung des Reichsgerichts über die Fürsorgepflicht im Arbeits- und Beamtenrecht des nationalsozialistischen Staates," *Verwaltungsarchiv*, Vol. 42, p. 220 (1937).

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COUNTY AND TOWNSHIP GOVERNMENT IN 1935–36*

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Quite generally recognized is the fact that rural local government in the United States has failed to keep pace with the improvements in governmental organization and procedure which have been made in the national, state, and municipal fields. In 1917, the county was referred to as the "dark continent" of American politics[1]—an appellation which might have been applied with equal propriety to the rural subdivisions of counties known as towns or townships. Today, after two decades, it must be admitted that rural government still lags in its rate of progress; yet it is not the unexplored jungle of twenty years ago. In several states, comprehensive surveys have been made with a view to reorganization, and during the past few years the depression has served to stimulate local-government consciousness where previously little interest was displayed in local affairs. In increasing numbers, attempts are being made, in some instances through constitutional amendment but more often by statutory enactment, to render our local areas, organization, and functions more adequate to present-day needs. Various extra-legal developments are taking place also. It is the purpose of this article to summarize the more significant developments in the field of county and township government during the years 1935 and 1936. While not all of these developments, when measured by principles of sound public administration, can be said to be in the direction of progress, a definite trend in that direction is clearly discernible.

The statutes of the various states have necessarily constituted the most important single source of information for the data presented herein. However, use has been made also of court decisions, articles and notes in periodicals, and miscellaneous materials. In some instances, an effort has been made to determine, through correspondence, the extent to which the local units have actually made use of permissive legislation. For convenience, the data presented may be grouped under the following headings: (1) areas; (2) organization and personnel; (3) functions; (4) finance; (5) home rule and optional charters; and (6) intergovernmental relations.

I. AREAS

Territorial Consolidation. During the biennium under discussion, the problem of readjusting local governmental areas to meet modern needs

* The writer is indebted to Mr. George Traicoff, a student in the University of Illinois College of Law, for the preliminary analysis of much of the statutory material used in the preparation of this article.

[1] H. S. Gilbertson, *The County: The "Dark Continent" of American Politics* (New York, 1917).

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was considered in several states. Oregon and Wisconsin enacted permissive legislation contemplating the voluntary consolidation of counties.[2] In Oregon, the new legislation, in the form of an amendment to an existing law, enables the local inhabitants, by petition and popular vote, to effect the elimination of individual counties through boundary changes. The Wisconsin law authorizes any two or more adjacent counties to consolidate by majority vote of the electors voting on the question in each county involved, the proposition being submitted to the voters either by action of the county governing boards or by initiative petition. The legislatures of Florida and Pennsylvania proposed constitutional amendments permitting city-county consolidation in certain metropolitan communities.[3] The Florida amendment, which was approved by the voters of the state at the November election of 1936, authorizes the legislature, with the approval of the voters of Monroe county, to consolidate that county with the city of Key West. The proposal in Pennsylvania, which has yet to be submitted to the voters of the state, is for an amendment abolishing Philadelphia county as a separate municipal corporation and effecting a complete consolidation of the county government with that of the city of Philadelphia.

A practical obstacle in the way of territorial consolidation is frequently encountered in the necessity that existing indebtedness of the unit or units eliminated be assumed by one or more of the units resulting from the merger. In Indiana, a law was enacted which is designed to remove this obstacle as far as the consolidation of townships is concerned. By the terms of this statute, if any township is dissolved or has its boundaries changed, the territory of the township as it existed prior to such change will remain as a special taxing district for the purpose of retiring any township indebtedness existing at the time the change was made.[4]

An instance of territorial consolidation actually effected is provided in the merging of the 46 judicial townships of Los Angeles county, California, into 24 larger units. This consolidation, which was accomplished by order of the county board of supervisors, became effective in January, 1935. It is reported that the savings resulting from the consolidation during the first six months of operation thereunder amounted to nearly $10,000 a month, and that, in addition, increased efficiency was evident in the administration of the township courts and constables' offices.[5]

On the other hand, the movement for consolidation of local areas met

[2] *Oregon Laws*, 1935 (reg. sess.), ch. 321; *Wisconsin Session Laws*, 1935, ch. 332.

[3] *General Acts and Resolutions of Florida*, 1935, p. 1513; *Laws of Pennsylvania*, 1935, p. 1365.

[4] *Laws of Indiana*, 1935, ch. 135.

[5] Roger W. Jessup, "Consolidation Pays Dividends," *Tax Digest*, Vol. XIV, pp. 8–9, 22 (Jan., 1936).

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with reverses on various fronts. Montana amended her constitution to restrict the power of the legislature to consolidate counties by providing that no county may be abandoned, abolished, or wholly or partially consolidated with any other county, except by majority vote of the qualified electors of such county. A proposed merger of Duval county, Florida, with the city of Jacksonville, which had been authorized by a constitutional amendment adopted in 1934, was defeated by the local voters in 1935. In California, the voters of the state rejected a proposed constitutional amendment designed to extend to any county containing one or more incorporated cities or towns the privilege, now enjoyed only by counties of 200,000 population or over, of framing and adopting a home-rule charter providing for city-county consolidation.[6]

New Areas. Further complication of the map of local areas resulted from the creation of various types of *ad hoc* districts. The districts thus established or authorized by state legislatures, by general or special act, include flood control districts; water conservation districts; sanitary districts; water supply districts; water and sewer districts; public service districts; water, fire, sewer, and lighting districts; heat, light, and power districts; and wind erosion conservation districts. In some instances, the boundaries of these new districts were made coterminous with those of counties or townships, while in others the new districts were made to consist of parts or combinations of the existing local areas.

II. ORGANIZATION AND PERSONNEL

New Offices Created. The period under consideration saw the structure of local government further complicated by the creation of various new offices and agencies. Perhaps the most significant of these are the county welfare agencies established in numerous states for the local administration of various welfare activities—particularly those subsidized by the federal government. In at least ten states, integrated departments were established for the local administration of two or more of the following welfare functions: old-age pensions, mothers' pensions, pensions for the blind, and ordinary relief.[7] Some of the statutes providing for these new

[6] *Laws, Resolutions, and Memorials of Montana*, 1935, ch. 102; Thomas H. Reed, "Consolidation of Duval County and Jacksonville Fails," *National Municipal Review*, Vol. XXIV, p. 402 (July, 1935); Victoria Schuck, "City-County Consolidation Amendment Defeated," *ibid.*, Vol. XXVI, p. 96 (Feb., 1937); Paul W. Wager, note in *ibid.*, Vol. XXV, p. 743 (Dec., 1936).

[7] *General Laws of Alabama*, 1935, nos. 332, 448, 496; *Laws of Colorado*, 1936 (2nd spec. sess.), ch. 5; *Laws of Illinois*, 1935–1936 (1st spec. sess.), p. 70; *Laws of Indiana*, 1936, ch. 3; *Acts of Louisiana*, 1936, no. 14; *Laws of Maryland*, 1935, ch. 586; *ibid.*, 1936 (1st spec. sess.), chs. 145, 149; *Session Laws of Nebraska*, 1935 (spec. sess.), chs. 20, 21, 24, 30; *Oregon Laws*, 1935 (spec. sess.), ch. 55; *Wisconsin Session Laws*, 1935, ch. 554; *Session Laws of Wyoming*, 1935, ch. 64. In a few instances,

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welfare departments make the establishment of such agencies mandatory in every county, while others make their establishment optional with the respective county governing boards; in Maryland, the option lies with the board of state aid and charities. The department is usually under an appointive or ex-officio board which is authorized to employ a director or superintendent to act as the department's executive officer. Several states other than those establishing integrated county welfare departments set up county boards to participate in the administration of old-age pensions. In some states, as Michigan and Missouri, these local boards are limited to receiving and investigating applications and reporting their recommendations thereon to the state authorities; while in others, as Montana, the local boards actually grant or deny the applications subject to appeal to the appropriate state agency.[8] Other local offices established by general or special law in different states comprise a varied list, including health officers, park boards, recreation committees, rural policemen, traffic officers, tax collectors, building inspectors, and cattle-brand inspectors.[9]

Also of interest in the field of local organization is a Maine law providing a limited town meeting for the town of Sanford. This act, which was made subject to local referendum and was approved by the voters of the town, provides for a town-meeting consisting of from 150 to 200 members elected by districts for three-year overlapping terms. The act marks the first departure in the state of Maine from the traditional town-meeting. The power of the legislature to provide such a form of town government was sustained in an advisory opinion by the state supreme court.[10]

Consolidation and Abolition of Offices. On the other hand, steps were taken in several states with a view to simplifying local government by the consolidation of local offices. An amendment to the Alabama constitution[11] authorized the legislature to consolidate county offices in Calhoun and Tuscaloosa counties. The Montana legislature, acting under a con-

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the creation of the new welfare departments was accompanied by the abolition of certain existing welfare agencies, and to that extent resulted in simplification, rather than complication, of the local organization setup. For the most part, however, the duties imposed upon the new departments concern either newly-undertaken activities or activities which had previously been carried on directly by the county governing board.

[8] *Public Acts of Michigan*, 1935, no. 159; *Laws of Missouri*, 1935, p. 308; *Laws, Resolutions, and Memorials of Montana*, 1935, ch. 170.

[9] Kentucky repealed an act of 1934 consolidating the offices of jailer and sheriff, thereby re-establishing these as two separate county offices. *Acts of Kentucky*, 1936–37 (4th spec. sess.), ch. 14.

[10] *Private and Special Laws of Maine*, 1935, ch. 72; *In re Opinion of the Justices*, 133 Me. 532, 178 A.613 (1935); O. C. Hormell, "New Legislation Affecting Cities in Maine," *Public Management*, Vol. XVII, pp. 375–376 (Dec., 1935).

[11] See *infra*, "The Fee System" and footnote 70.

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stitutional amendment ratified in 1934, enacted a law providing for the consolidation of any two or more constitutional county offices in any county by order of the board of county commissioners. A proposed amendment to the Kentucky constitution, which was given legislative approval in 1936 and will be submitted to the voters in the state election of 1937, authorizes the general assembly, by legislation of state-wide application or in accordance with classification based upon population, to consolidate any or all governmental offices or agencies existing within the territorial confines of the respective counties, and to redistribute or consolidate the powers and functions of such offices or agencies as it sees fit. By the terms of the 1935 "home-rule" amendment to the New York constitution, any county office other than that of judge, county clerk, or district attorney, in the counties within New York City, may be abolished by the city authorities, the functions of offices so abolished being transferred to appropriate city offices or to the courts or county clerks. In a few instances, the abolition or consolidation of local offices was effected directly by statutory provision. Thus, the office of city treasurer was abolished in cities of the second class in Indiana and the duties transferred to the respective county treasurers; while the office of county treasurer was abolished in certain North Carolina counties.[12]

A proposed amendment to the constitution of Alabama which would have permitted the legislature to consolidate county offices in Jefferson county was defeated by the voters in the 1936 election, as was a proposed amendment to the North Dakota constitution which, had it been adopted, would have meant a backward step in the movement for consolidation.[13] The latter proposal sought to limit to counties with a population of 12,000 or less the provision, now applicable to those with a population of 15,000 or less, for compulsory consolidation of the offices of county judge and clerk of the district court; and to make optional with the county voters, instead of compulsory as at present, the further consolidation, in counties having a population of 6,000 or less, of the office of register of deeds with the other two offices named.

Qualifications, Election, and Removal of Officers. Various statutes and court decisions relating to the qualifications, election, and removal of local officers deserve notice. The supreme court of Florida, on the ground that the state constitution implies that the incumbent of a constitutional office shall be competent to perform the technical duties of his office,

[12] *Laws of Indiana*, 1935, ch. 112; *Acts of Kentucky*, 1936 (reg. sess), ch. 19; *Laws, Resolutions, and Memorials of Montana*, 1935, ch. 125; *Laws of New York*, 1935, p. 1909; *Public-Local Laws of North Carolina*, 1935, chs. 10, 154.

[13] *General Laws of Alabama*, 1935, no. 423; *Laws of North Dakota*, 1935, ch. 102; Charles W. Edwards, "Consolidation of Offices Defeated," *National Municipal Review*, Vol. XXVI, pp. 145–146 (Mar., 1937); letter to the writer from G. A. Gilbertson, deputy secretary of state of North Dakota, Bismarck, July 20, 1937.

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upheld the power of the legislature to prescribe reasonable professional qualifications for the constitutional office of county surveyor. In Georgia, it was held that the constitutional provisions prescribing the qualifications of county officers refer only to such offices as were in existence when the constitution was adopted and do not apply to offices thereafter created by statute. Therefore, a statutory qualification of two years' residence for the office of county school superintendent was valid notwithstanding a constitutional provision fixing a four-year residence requirement for county officers. A Tennessee statute required full-time county health officers to possess the M.D. degree and be "schooled and experienced in public health work." Oklahoma repealed a statutory provision prohibiting county treasurers from holding office for more than two successive terms, as did Michigan a provision that township treasurers might not serve more than four years in succession. A proposed constitutional amendment making sheriffs of New York counties eligible to succeed themselves was given first legislative approval in 1935.[14]

In Michigan counties of 500,000 or more inhabitants, candidates for nomination to county office (or to the state legislature) are now required to make a cash deposit in lieu of filing a primary petition, such deposit to be forfeited by any such candidate who is not nominated or does not secure a vote equal to fifty per cent of that received by the winning candidate. By the terms of an act of 1936, the sheriffs of Rhode Island counties will hereafter be appointed by the governor, instead of by the general assembly as hitherto, and will serve at the pleasure of the chief executive. In South Dakota, under the terms of a new constitutional amendment, county school superintendents will henceforth be elected by non-partisan ballot. A Colorado statute provides the popular recall as a means of removing any elective county officer after he has held his office for six months and prescribes the procedure by which such recall is to be effected.[15]

County and Town Executives. Several attempts to provide local governmental units with real administrative heads were made during the period, some meeting with success and others with failure. The manager form of government was adopted by the voters of Monroe county (Rochester), New York, in November, 1935, and became effective on January 1, 1936. In adopting the manager plan, Monroe county acted under the so-called Buckley law of 1935, which provides a second alternative form

[14] *Session Laws of Oklahoma*, 1935, p. 178; *Public Acts of Michigan*, 1935; no. 16; *Laws of New York*, 1935, p. 1915; *Public Acts of Tennessee*, 1935 (spec. sess.), ch. 37; State v. Ward, 117 Fla. 585, 158 So. 273 (1934); Marshall v. Walker, 183 Ga. 44, 187 S.E. 81 (1936).

[15] *Laws of Colorado*, 1935 (reg. sess.), ch. 185; *Public Acts of Michigan*, 1935, no. 60; *Acts and Resolves of Rhode Island*, 1936 (December sess.), p. 14; George C. S. Benson, "State Constitutional Development in 1936," in this REVIEW, Vol. XXXI, pp. 280–285 (Apr., 1937).

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of county government with an elective executive. A test case instituted to secure a judicial determination of the validity of the new government in Monroe county resulted in a decision by the appellate division of the state supreme court sustaining the validity of the manager plan and the enabling statute against the contention that the plan involved an unconstitutional delegation to the manager of legislative powers belonging to the board of supervisors. The court took the view that the powers transferred from the supervisors to the manager were of an administrative, rather than a legislative, character. In other cases involving the Monroe county charter, the courts have sustained the power of the manager to dismiss subordinate administrative officials, and the power of the legislature to transfer to the manager powers of an administrative nature formerly possessed by other statutory officers. A second New York county will be provided with a real administrative head—in this instance, an elective executive—when the new charter adopted by Nassau county in 1936 becomes effective on January 1, 1938. It is also of interest to note that three of the five alternative forms of government provided by the Fearon-Parsons law, enacted in pursuance of the recent amendment to the New York constitution, include provision for a county executive, elective under one plan and appointive under two.[16]

By acts of 1935, the Georgia legislature established an elective executive for Montgomery county and provided for referenda in several other counties upon the proposition of substituting a single commissioner of roads and revenues for the existing board of commissioners of roads and revenues.[17] Home-rule charters providing for county executives were defeated in 1935 in Kern and Butte counties, California.[18] A manager charter adopted by Douglas county, Nebraska, was prevented from taking effect at the beginning of 1937 by a decision of the state supreme court invalidating the optional statute under which the county had acted.[19]

The 1935 session of the Maine legislature provided for the establishment, subject to local referenda, of a manager form of government in the towns of Ashland, Oakland, and Richmond. A town manager is to be appointed for a term of not to exceed three years by a town council of five members elected for three-year overlapping terms at the annual town-meeting. A similar form of government, with a manager appointed by a board of five selectmen chosen for three-year overlapping terms, was provided for the town of Rumford and has been adopted by local referendum.

[16] Cort v. Smith, 291 N.Y.S. 54 (1936); Carey v. Smith, 286 N.Y.S. 630 (1936); Morrall v. Monroe County, 271 N.Y. 48, 2 N.E. (2d) 40 (1936). See *infra*, "Home Rule and Optional Charters."

[17] *Acts and Resolutions of Georgia*, 1935, pp. 620, 675, 728, 751, 784.

[18] E. A. Cottrell, "Spotlight on the County Manager Plan," *National Municipal Review*, Vol. XXV, pp. 564–570 (Oct., 1936).

[19] See *infra*, "Home Rule and Optional Charters."

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The manager charter of the town of Fort Fairfield was amended to give the manager greater security of tenure. According to the terms of the amendment, the manager, who was formerly removable by the board of selectmen after a public hearing, may now be removed only by majority vote at a town meeting.[20]

Personnel Administration. In the field of personnel administration, the period under consideration witnessed definite, if limited, progress. The merit system for county employees was established in four counties: in Jefferson county, Alabama, by special act of the state legislature; in San Diego county, California, by charter amendment; in Henrico county, Virginia, by action of the county board of supervisors; and in Camden county, New Jersey, by vote of the electors to place county employees under the jurisdiction of the state civil service commission.[21] It is significant that in all of the three counties in which a local civil service authority is provided, the actual administration of the personnel system is placed in the hands of a single personnel officer or director. Permissive legislation which may ultimately be productive of tangible results was enacted in Ohio and Wisconsin. In the former state, the electors of any county are authorized to establish, by charter provision, a county civil service commission, personnel office, or personnel department. Under the terms of the Wisconsin statute, the board of supervisors of any county of less than 500,000 population may apply the merit system to the selection of deputy sheriffs, requiring the sheriff to make appointments from a list of eligibles certified by the director of the state bureau of personnel as a result of competitive examinations. A proposed amendment to the constitution of Pennsylvania providing for the consolidation of Philadelphia county with the city of Philadelphia enjoins upon the general assembly the duty of establishing a merit system for the appointment and promotion of officers and employees of the consolidated municipality.[22]

Judicial, as well as legislative and popular, approval was given to the merit principle, the new systems in Jefferson county, Alabama, and San

[20] *Private and Special Laws of Maine*, 1935, chs. 12, 48, 52, 58, 77; O. C. Hormell, *loc. cit.*

[21] *General Laws of Alabama*, 1935, no. 284; *Statutes of California*, 1935, p. 2361; James E. Pate, "Henrico County Adopts Merit System," *National Municipal Review*, Vol. XXV, pp. 543–544 (Sept., 1936); H. M. Olmsted, note in *ibid.*, Vol. XXV, pp. 737–738 (Dec., 1936). The civil service authority established for Jefferson county, Alabama, also serves the cities of Birmingham and Bessemer.

[22] *Legislative Acts and Joint Resolutions of Ohio*, 1935, p. 132; *Laws of Pennsylvania*, 1935, p. 1365; *Wisconsin Session Laws*, 1935, ch. 349. Under the Wisconsin statute, an examination for deputy sheriffs in Racine county was conducted, but the proceedings were held to be irregular on the ground that the county ordinance requesting the state bureau to hold the examination did not conform to statutory requirements. (Letter to the writer from A. J. Opstedal, acting director, State Bureau of Personnel, Madison, June 7, 1937.)

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Diego county, California, being upheld by the courts against attacks upon their constitutionality.[23] In Ohio, a significant decision of the supreme court resulted in bringing back under the jurisdiction of the state civil service commission some 10,000 county employees. Inasmuch as the civil service law places "deputies" in the unclassified service, it had been a common practice for county officers to designate a wide variety of their employees and assistants as deputies with a view to retaining full control over their appointment and removal. In the instant case, the court held that whether a county employee is a deputy depends not upon the title of his position but upon his actual duties. Thus, it was ruled that tax clerks, tellers, typists, and book-keeping machine operators in the county auditor's office, and jail guards in the sheriff's office, are not deputies who can perform all the duties of the principals, but are employees subject to civil service classification.[24]

Deserving of notice as a step in the direction of providing short courses for the instruction of local officials is the work of the Town and County Officers Training School of the State of New York, recently incorporated by the regents of the University of the State of New York. The first school sponsored by this organization was held in Rochester in 1935, and the following year a second school was conducted in the same city under the auspices of the Rochester *Democrat and Chronicle*. The 1936 Rochester meeting was attended by more than 600 local officials, legislators, and citizens from nine counties, and was followed by similar schools in Albany, Buffalo, and Potsdam.[25] By an act of 1936, the New York legislature authorized the payment of a part of the cost of the training school's program from federal grants for vocational education, provided that the school's course of study and plan of instruction should be approved by the university regents. Legislation contemplating training courses for rural police was enacted in at least two instances, Barnstable county, Massachusetts, being authorized to establish a police training school under the direction of the sheriff, and the training school of the Pennsylvania State Police being charged with the duty of conducting courses for the training of policemen to serve the various political subdivisions of the state.[26]

Organization of Local Officials. A significant development during recent years has been the strengthening of the "professional" organizations of

[23] Yeilding v. State, 232 Ala. 292, 167 So. 580 (1936); Cornell v. Harris, 59 P. (2d) 570 (Calif. Dist. Ct. of App., 4th dist., 1936).

[24] State v. Guckenberger, 131 Ohio St. 466, 3 N.E. (2d) 502 (1936). Cf. G. Lyle Belsley, "Personnel Administration," *Municipal Year Book*, 1937, pp. 15–20.

[25] Paul W. Wager, note in *National Municipal Review*, Vol. XXVI, pp. 40–41 (Jan., 1937); and data supplied by Professor M. P. Catherwood, Cornell University.

[26] *Acts and Resolves of Massachusetts*, 1935, ch. 61; *Laws of New York*, 1936 (reg. sess.), ch. 581; *Laws of Pennsylvania*, 1935, no. 411¼.

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local government officials, through which those officials seek to promote their own interests and the interests, as interpreted by them, of the governmental units which they serve. Although many such organizations have been in existence for several decades, the demand for retrenchment occasioned by the depression has been a signal for the creation of such organizations where they did not previously exist, and the invigoration of existing organizations. Several instances of such action occurred during the period under consideration. The Association of Virginia County Supervisors held its first annual meeting at Roanoke in March, 1935, and appointed a legislative committee to look after the association's interests in the general assembly. Two months earlier, an association was formed by the trial justices of Virginia and the judges of certain other local courts in that state.[27] During the same year, the local officials of Ohio organized the Ohio Association of County, Municipal, and Township Governments.[28] Organizations of local officers were given legal recognition in Pennsylvania by legislation providing that such agencies should coöperate with the state secretary of internal affairs in the preparation of budget and report forms for certain local units. The organizations thus recognized include the Pennsylvania State Association of Township Commissioners, the Association of Directors of the Poor and Charities and Corrections, the Pennsylvania State Association of County Commissioners, and the Pennsylvania State Association of County Controllers.[29] Subject to certain restrictions, Wisconsin counties and Minnesota towns were authorized to pay membership fees in local-officers' associations from their respective treasuries.[30]

One of the most important developments in the organization of local officials, in the form of a federating of existing organizations, occurred in Indiana. Various local-government officers in that state have long been organized on a state-wide basis, the Indiana State Association of Township Trustees dating from 1890 and the Indiana County Commissioners Association from the early years of the present century. Nine other state-wide associations have for some years served as agencies for concerted action on the part of county sheriffs, assessors, auditors, treasurers, clerks, recorders, highway supervisors, surveyors, and attorneys, respectively. During the summer of 1935, the Indiana County and Township Officials Association was incorporated to serve as a federation of the 11 existing agencies. This new organization, the membership of which includes nearly

[27] James E. Pate, "Virginia County Officers Organize," *National Municipal Review*, Vol. XXIV, p. 273 (May, 1935).

[28] Wade S. Smith, note in *National Municipal Review*, Vol. XXIV, p. 647 (Nov., 1935).

[29] *Laws of Pennsylvania*, 1935, nos. 384, 386, 419.

[30] *Session Laws of Minnesota*, 1935 (reg. sess.), ch. 120; *Wisconsin Session Laws*, 1935, ch. 392.

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3,000 local officials, adopted as its official publication the *Indiana County and Township Officer*, a monthly magazine which had previously served the associations of county commissioners and township trustees, and held its first annual convention in Indianapolis in December, 1935.[31] The new federation promises to enhance still further the influence of county and township officers over the course of legislation pertaining to local government—an influence already exerted with a high degree of effectiveness through the individual associations.

III. FUNCTIONS

New Functions. The list of functions performed by counties and townships continued to grow with the enactment of legislation conferring new functions upon those units and broadening their powers with respect to existing functions. Counties in Colorado, Florida, Ohio, Oregon, South Carolina, and South Dakota were authorized to acquire land for park and /or recreational purposes, while counties in North Dakota and Oregon were authorized to set aside for park purposes land acquired for delinquent taxes. Oregon and Virginia counties, and Louisiana parishes, were authorized to establish and maintain airports. The power to establish and operate electric utility plants was conferred upon the counties of Mississippi and Tennessee and upon three Vermont towns; while two towns in the latter state, and Missouri counties of 25,000 or more inhabitants, were authorized to operate water utilities. Several South Carolina counties were authorized to erect county hospitals; while Kentucky counties and about half of the counties of North Carolina were authorized to provide by contract for the hospitalization of their indigent sick.[32] A

[31] Data from the writer's doctoral dissertation presented at the University of Illinois in 1936. Mention might also be made of the American County Association, which was incorporated under the laws of Illinois in 1933 with headquarters in Chicago. This association was apparently designed to effect a national organization of county officials and persons interested in county government, and to serve as a central clearing-house for information relative to county administration. For several months during 1935, the association published the *National County Magazine* as its official organ, and in October of that year a national convention was held in Chicago. During recent months, however, the organization seems to have lapsed into inactivity.

[32] *Laws of Colorado*, 1935 (reg. sess.), ch. 222; *General Acts and Resolutions of Florida*, 1935, p. 579; *Acts of Kentucky*, 1936 (reg. sess.), ch. 91; *Acts of Louisiana*, 1936, no. 222; *Laws of Mississippi*, 1936 (reg. sess.), ch. 185; *Laws of Missouri*, 1935, p. 327; *Public Laws and Resolutions of North Carolina*, 1935, ch. 65; *Laws of North Dakota*, 1935, ch. 118; *Legislative Acts and Joint Resolutions of Ohio*, 1935 (reg. sess.), p. 132; *Oregon Laws*, 1935 (reg. sess.), chs. 217, 218, 226; *ibid.* (spec. sess.), ch. 15; *Acts and Joint Resolutions of South Carolina*, 1935 (reg. sess.), nos. 92, 153, 308; *ibid.*, 1936, nos. 656, 1124, 1131; *Laws of South Dakota*, 1935, ch. 76; *Public Acts of Tennessee*, 1935 (reg. sess.), ch. 32; *Acts and Resolves of Vermont*, 1935 (reg. sess.), nos. 242, 243, 257, 263, 264; *Acts of Virginia*, 1936 (reg. sess.), ch. 252.

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considerable number of states conferred upon their counties new or extended functions with respect to welfare administration, and in several states rather broad powers of planning and zoning were conferred upon counties by general enabling statutes.[33] Other functions conferred upon some or all counties in various states include those of establishing and maintaining museums, art galleries, and memorials; establishing and maintaining county libraries; conducting free fairs; establishing and operating or leasing farm marketing centers; exterminating mosquitoes; erecting traffic signals; conducting recreational programs; and establishing fire control units.

Floods, dust storms, and the need for soil conservation are reflected in a large number of legislative enactments. Nebraska counties, and certain counties in the Carolinas, were authorized to provide terracing or soil-erosion machinery to be rented to farmers, similar authority with respect to drainage machinery being conferred upon the counties of Alabama. Powers with respect to the improvement of water courses were conferred upon Oregon counties, Louisiana parishes, and second-class townships in Pennsylvania; while 16 New York counties were authorized to appropriate public funds to defray the administrative expenses of flood-control organizations. Boards of county commissioners in Oklahoma were given rather broad power to take action, upon petition by local landowners, for the prevention of soil erosion; while in Kansas an attempt to confer a similar power was frustrated by the state supreme court. A statute enacted by the Kansas legislature in 1935 authorized boards of county commissioners to devise methods and means to stop the drifting of soil, but this act was declared unconstitutional the following year on the ground that it comprised an attempt to delegate to the county boards legislative power over a matter not local in character. The Kansas constitution authorizes the legislature to confer upon county tribunals "such powers of local legislation and administration as it shall deem expedient," but the court held that the problem of drifting soil is state-wide and not local in character, and that therefore the power to act with respect thereto could not be delegated to county boards.[34]

In several instances, counties and townships were vested with power to enact local police legislation for certain purposes. Thus, Oregon counties were authorized to license, tax, or regulate pin-ball games; second-class

[33] See *supra*, "New Offices Created"; *infra*, "Planning and Zoning."

[34] *General Laws of Alabama*, 1936 (spec. sess.), no. 127; *Kansas Session Laws*, 1935, ch. 138; *Acts of Louisiana*, 1936, no. 122; *Session Laws of Nebraska*, 1935 (reg. sess.), ch. 54; *Laws of New York*, 1936 (reg. sess.), ch. 11; *Public Laws and Resolutions of North Carolina*, 1935, ch. 172; *Session Laws of Oklahoma*, 1935, p. 343; *Oregon Laws*, 1935 (reg. sess.), ch. 339; *Laws of Pennsylvania*, 1935, no. 406; *Acts and Joint Resolutions of South Carolina*, 1935 (reg. sess.), no. 477; *ibid.* (spec. sess.) no. 601; State v. Hardwick, 144 Kan. 3, 57 P. (2d) 1231 (1936).

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townships in Pennsylvania were empowered to regulate the manufacture, sale, or exposure of fireworks; in South Carolina, certain counties were authorized to license tourist camps outside incorporated cities and towns, while others were authorized to license "rolling stores"; and boards of county commissioners in Utah were authorized to regulate the growing of sugar beet seed with a view to protecting its quality.[35] Several states, in new liquor-control laws, conferred upon counties and other local units local-option powers with respect to regulating or prohibiting the sale of liquor within their borders.[36] Also of interest are certain laws designed to permit the expenditure of public funds by local governments for the purpose of "advertising" their respective communities. One such law authorizes El Paso county, Texas, to levy a tax to finance the activities of a board of county development charged with the duty of "advertising and promoting the growth and development" of the county and its county seat; while another empowers any New Jersey township or municipality to establish a local industrial commission to investigate and publicize the advantages of the local community from an economic and industrial standpoint.[37]

Planning and Zoning. One of the most significant developments during the biennium was that in the field of rural planning and zoning. Under the stimulus provided by the National Resources Committee, state legislation authorizing local planning, and local action in pursuance of such legislation, have proceeded apace. Six states—Florida, Idaho, Indiana, New Jersey, Virginia, and Washington—enacted general enabling statutes authorizing the establishment of a county planning commission in any county.[38] In five of these states, the authority to establish the county planning agencies is vested in the county governing boards of the respective counties, while the Florida statute vests that authority in the state planning board. Tennessee authorized the state planning commission to establish planning regions, which may or may not coincide with county

[35] *Oregon Laws*, 1935 (reg. sess.), ch. 369; *Laws of Pennsylvania*, 1935, no. 370; *Acts and Joint Resolutions of South Carolina*, 1935 (reg. sess.), no. 330; *ibid.*, 1936, no. 970; *Laws of Utah*, 1935, ch. 28.

[36] *Laws of Colorado*, 1935 (reg. sess.), ch. 142; *Acts of Louisiana*, 1935 (1st spec. sess.), no. 17; *ibid.* (2nd spec. sess.), no. 22; *Session Laws of Wyoming*, 1935, ch. 87. Cf. *Laws of Pennsylvania*, 1935, nos. 187, 211, providing for local referenda on questions of Sunday movies and polo games.

[37] *Acts of New Jersey*, 1936 (reg. sess.), ch. 154; *General and Special Laws of Texas*, 1935 (1st spec. sess.), ch. 370.

[38] *General Acts and Resolutions of Florida*, 1935, p. 1174; *General Laws of Idaho*, 1935 (1st spec. sess.), ch. 51; *Laws of Indiana*, 1935, ch. 239; *Acts of New Jersey*, 1935 (reg. sess.), ch. 251; *Acts of Virginia*, 1936 (reg. sess.), ch. 427; *Session Laws of Washington*, 1935, ch. 44. The county planning authority is designated as a "planning council" in Florida and a "planning board" in New Jersey.

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boundaries, and to appoint planning commissions therein.[39] The setting up of official county planning agencies under these and earlier statutes had proceeded until 231 such agencies could be reported as in existence in 16 states by the beginning of 1936.[40] It is significant that the only state in which every county was provided with an official planning agency was Florida, under whose statute the local authorities are established by the state planning board rather than by the county governing bodies. In addition to the seven county enabling acts just mentioned, the Tennessee legislature authorized the creation of a county planning commission in Shelby county, while New Hampshire enacted a general enabling act for the establishment of town planning boards.[41] In actual practice, moreover, local planning agencies are not limited to the official bodies established under enabling statutes specifically providing for their creation. In numerous states wherein no statutes have been enacted authorizing the establishment of official county planning commissions, laws setting up state planning boards have charged those bodies with the duty of coöperating with and advising local planning agencies, and in some instances have specifically directed the state board to encourage the establishment of local planning bodies.[42] Under a broad interpretation of the authority vested in them by such statutes, state planning boards in various states have sponsored the setting up of unofficial county planning commissions to coöperate with the state agency and to serve until official commissions may be provided for by law.[43]

The year 1935 saw county zoning enabling acts of general application enacted in five states, viz., Illinois, Indiana, Michigan, Tennessee, and Washington.[44] Wisconsin's law of 1923, which had been amended in 1929

[39] *Public Acts of Tennessee*, 1935 (reg. sess.), ch. 43.

[40] C. I. Hendrickson, *County Planning and Zoning* (mimeographed publication of the Division of Land Economics, Bureau of Agricultural Economics, U. S. Department of Agriculture, Washington, June, 1936), p. 3. The states having the largest numbers of commissions were Florida (67), Idaho (31), California (30), Wisconsin (29), Washington (25), and New York (19). For a list of the county planning enabling statutes in effect on January 1, 1936, see *ibid.*, pp. 10–11.

[41] *Private Acts of Tennessee*, 1935 (reg. sess.), Vol. II, ch. 706; *Laws of New Hampshire*, 1935, ch. 55.

[42] *Acts of Louisiana*, 1936, no. 38; *Laws of Mississippi*, 1936 (reg. sess)., ch. 189; *Laws, Resolutions, and Memorials of Montana*, 1935, ch. 176; *Laws of New Mexico*, 1935, ch. 137; *Laws of North Dakota*, 1935, ch. 217; *Session Laws of Oklahoma*, 1935, p. 87; *Oregon Laws*, 1935 (reg. sess.), ch. 5; *Laws of South Dakota*, 1935, ch. 191.

[43] Unofficial planning bodies were reported in 373 counties on January 1, 1936. The states having the largest numbers of such planning commissions were Texas (113), South Dakota (65), North Dakota (53), Missouri (33), Oregon (29), and Wyoming (23). Hendrickson, *op. cit.*, p. 3.

[44] *Laws of Illinois*, 1935 (reg. sess.), p. 689; *Laws of Indiana*, 1935, ch. 239; *Public Acts of Michigan*, 1935, no. 44; *Public Acts of Tennessee*, 1935 (reg. sess.),

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to give counties authority to zone rural lands for agricultural, forestry, and recreational purposes, was again amended in 1935 to broaden the power of the county board with respect to regulating buildings and eliminating non-conforming uses.[45] By the beginning of 1936, zoning ordinances had been adopted by 42 counties in six states.[46] It is to be noted, however, that, except in Wisconsin, county zoning has been confined almost exclusively to urban and suburban areas outside incorporated municipalities, with emphasis upon the regulation of the height, bulk, and use of buildings. But a program of rural zoning is now well under way in Wisconsin, 24 rural counties in the northern and central parts of that state having now adopted zoning ordinances for the purpose of regulating land use,[47] and it is to be expected that certain other states will eventually follow Wisconsin's example. Although the recent enabling laws of Illinois and Tennessee exempt agricultural lands from the zoning regulations, those of Michigan and Indiana clearly envisage the regulation of rural land use.[48]

County zoning suffered at least a temporary set-back in Georgia when the supreme court of that state declared invalid, as contrary to the state constitution, an act of 1927 which authorized zoning in Glynn county, and under which that county adopted a zoning ordinance in 1928. A constitutional amendment was necessary in Georgia to enable the legislature to confer zoning powers upon cities, and apparently a similar amendment will be necessary to permit county zoning.[49]

Transfer of Functions. The period under consideration witnessed a few

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ch. 33; *Session Laws of Washington*, 1935, ch. 44. Tennessee also enacted a special enabling act applying to Shelby county. *Private Acts of Tennessee*, 1935 (reg. sess.), Vol. II, ch. 625. Prior to 1935, California and Wisconsin had laws authorizing county zoning in all counties, while zoning was authorized in certain counties in Georgia, Kentucky, Maryland, and Virginia. See Hendrickson, *op. cit.*, pp. 22–23.

[45] *Wisconsin Session Laws*, 1935, chs. 303, 403, Cf. W. A. Rowlands and F. B. Trenk, *Rural Zoning Ordinances in Wisconsin* (Circular 281, Extension Service of the College of Agriculture, University of Wisconsin, Madison, July, 1936), p. 3.

[46] For a list of such counties, see Hendrickson, *op. cit.*, pp. 24–25.

[47] For a list of 23 of these counties, five of which adopted their ordinances in 1935, see Hendrickson, *op. cit.*, p. 25. The recent adoption of an ordinance by Taylor county brings the total number of zoned rural counties to 24. (Letter to the writer from Professor W. A. Rowlands, University of Wisconsin, Aug. 3, 1937). Milwaukee county has an urban zoning ordinance.

[48] Each of the six New England states has a law authorizing town zoning, while a few other states authorize zoning by some or all townships. See Hendrickson, *op. cit.*, p. 26.

[49] Commissioners of Glynn County v. Cate, 183 Ga. 111, 187 S.E. 636 (1936); Walter H. Blucher, "Planning and Zoning," *Municipal Year Book*, 1937, pp. 47–52; Hendrickson, *op. cit.*, p. 24. A proposed amendment which would have permitted certain counties, including Glynn, to enact zoning ordinances, was defeated by the voters of the state in 1930. Henrickson, *op. cit.*, p. 23.

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instances of the transfer of functions from local units of government to the state and of the transfer of functions, within the local field, from the township to the county. Outstanding in the former class is the transfer of the county roads of Delaware to the state highway department. Certain examples of the shifting of functions from the township to the county, or the authorization of such shifting, may be mentioned. Ohio provided that any county may assume the administration of non-institutional poor relief or provide a county park system, while any charter county, by charter amendment, may establish a county health department to supersede all district health offices within the county. Michigan counties were authorized to adopt the county rather than the township as the unit for rural zoning. The year 1936 also witnessed the completion in Michigan of the gradual transfer of township roads to the counties under an act of 1931, and it is reported that the county is demonstrating its superiority as an administrative unit. Although the trend of the period was distinctly in the direction of centralization rather than decentralization of functions, an occasional instance of decentralization is encountered, as, for example, an act of Ohio providing that the local units of government should take over the duties of the state relief commission.[50]

Functional Consolidation. Although the laws designed to promote geographic consolidation or the transfer of governmental functions from smaller to larger units were quite limited in number, numerous statutes authorizing what is frequently designated as "functional consolidation" were enacted. In a sense an alternative to physical consolidation and the transfer of functions to larger existing units, functional consolidation involves the coöperation of two or more existing local units in the performance of particular functions. It sometimes takes the form of a joint performance by the units concerned, frequently through the creation of a special district, of a function common to both or all; while in other instances it involves a contractual agreement whereby one political subdivision performs the service or services concerned for the other unit or units at the expense of the latter.[51] Usually the effecting of such consolidation is left by the statutes to the option of the local units, although in some instances joint districts have actually been set up by the legislature for the performance of designated functions. While functional consolidation may be authorized as between any two or more units of local government, it has in practice been most frequently provided, on the one hand, with

[50] *Laws of Delaware*, 1935, ch. 107; *Public Acts of Michigan*, 1935, no. 44; *Legislative Acts and Joint Resolutions of Ohio*, 1935 (reg. sess.), pp. 132, 571; Murray D. Van Wagoner, "Township Roads," *Engineering News-Record*, Vol. CXVII, pp. 649–652 (Nov. 5, 1936).

[51] Cf. John M. Peirce, "Mergers in Government," *Tax Digest*, Vol. XIV, pp. 192–193, 207 (June, 1936).

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respect to two or more contiguous counties, and, on the other, with respect to individual counties and the cities or other political subdivisions located therein.

In three states, a blanket power of effecting functional consolidation was conferred upon certain local units. Thus, an Ohio statute was enacted authorizing the board of county commissioners of any county to enter into an agreement with the legislative authority of any taxing subdivision thereof to perform for such subdivision any function or service which the latter is authorized to perform. Likewise, one county may contract with another for the performance of any county function. The law provides that any such agreement shall either fix the amount to be paid by the county or subdivision receiving such service to the county rendering the same, or prescribe a method for determining such amount. A California statute authorizes counties to contract with cities and towns within their borders to perform any municipal function or functions for such cities and towns. And in New York the recent "home-rule" amendment stipulates that the boards of supervisors of two or more counties may provide, by agreement, for the discharge of one or more governmental functions.[52]

Much more numerous are the states which authorized functional consolidation with respect to the performance of certain designated services. Thus, several of the new public-welfare acts provide that two or more counties may, with the approval of the state department of public welfare, coöperate in the establishment of district welfare departments serving the coöperating counties.[53] Pennsylvania authorized the consolidation of the poor districts within any county either by popular vote or, upon petition and after a hearing, by order of the court of quarter sessions. In New Mexico, 10 health districts, consisting of from two to four counties each, were established with district health officers supplanting county officials; while Indiana and North Carolina authorized the establishment of full-time health districts consisting of two or more counties. Washington enacted a statute providing that any two or more adjacent counties may maintain a joint tuberculosis sanitorium; while Fulton county, Georgia, and the city of Atlanta were empowered to contract with each other with respect to the operation of a sewage disposal plant.[54]

[52] *Statutes of California*, 1935, ch. 735; *Laws of New York*, 1935, p. 1909; *Legislative Acts and Joint Resolutions of Ohio*, 1935 (reg. sess.), p. 102.

[53] *Laws of Colorado*, 1936 (2nd spec. sess.), ch. 5; *Laws of Illinois*, 1935–1936 (1st spec. sess.), p. 70; *Laws of Indiana*, 1936, ch. 3; *Session Laws of Wyoming*, 1935, ch. 64.

[54] *Acts and Resolutions of Georgia*, 1935, p. 467; *Laws of Indiana*, 1935, ch. 217; *Laws of New Mexico*, 1935, ch. 131; *Public Laws and Resolutions of North Carolina*, 1935, ch. 142; *Laws of Pennsylvania*, 1935, no. 287; *Session Laws of Washington*, 1935, ch. 86.

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In South Carolina, cities, towns, and counties were authorized to take joint action in the operation of parks, playgrounds, and recreational centers; while school districts in Colorado were empowered to coöperate with cities or counties in the operation of playgrounds and recreation systems. Some degree of consolidation with respect to park administration was actually achieved in two Wisconsin communities: in Milwaukee county, the city of Milwaukee and several smaller municipalities voted to transfer jurisdiction over their municipal parks to the county, which already administered a park system of its own; while the park commission of the city of Wausau joined with the county park commission of Marathon county in employing a park superintendent and other administrative personnel. County fire protection districts in California were empowered to contract with any contiguous municipality or municipalities to receive fire-protection service therefrom.[55] Other functions which local governmental units in various states were authorized or directed to perform on a coöperative basis, either through joint action or by contractual agreement, include: soil-conservation and flood-prevention activities; operation of water and electric utilities; construction and maintenance of airports; establishment and management of libraries; maintenance of schools; construction and maintenance of public halls; conducting of civil service examinations; and the establishment of road camps for the employment of local prisoners.

Perhaps the highest degree of functional consolidation yet achieved in any community is to be found in Los Angeles county, California. There, in 1936, the county, under contract, assessed property and collected taxes for 38 of the county's 44 cities, performed health functions for 36 cities, provided library facilities for 21 cities, and performed civil-service functions for two cities.[56]

IV. FINANCE

Budgeting and Accounting. Significant progress was made during the biennium in the field of local budgeting and accounting. Florida required all counties and other taxing districts to adopt annual budgets, while New Jersey completely revised her local-budget law with a view to placing local units on a "cash basis" by the end of 1943. Legislation designed to strengthen existing statutes with respect to local budgeting was enacted in Alabama, Colorado, Indiana, Nevada, and Pennsylvania.

[55] *Statutes of California*, 1935, ch. 273; *Laws of Colorado*, 1935 (reg. sess.), ch. 222; *Acts and Joint Resolutions of South Carolina*, 1935 (reg. sess.), no. 92; Lee S. Greene, "Milwaukee City Parks to be Transferred to County," *National Municipal Review*, Vol. XXV, p. 374 (June, 1936); L. H. Weir, "Parks and Recreation," *Municipal Year Book*, 1937, pp. 64–69.

[56] Frank M. Stewart, "City-County Contractual Relationships," *Public Management*, Vol. XIX, pp. 14–17 (Jan., 1937).

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Certain Tennessee counties were provided with budget systems by special laws. New Hampshire, in 1935, enacted an optional town budgeting law under which 68 towns were operating by the end of 1936. A provision of Missouri's county budget law prohibiting the county governing body from revising the estimates of expenditures submitted by the circuit court and circuit clerk, was upheld by the supreme court of that state against the contention that it constituted an unlawful delegation to the court and clerk of the power to tax.[57]

Several states enacted legislation designed to improve local accounting methods and secure reliable audits of local accounts. The most comprehensive measure of this character was that enacted by Kansas in 1935. The Kansas statute sets up a state municipal accounting board charged with the licensing of municipal accountants. Within two years after July 1, 1935, and annually thereafter, all counties and all cities of the first and second classes must have their accounts audited by either municipal public accountants or certified public accountants; and by January 1, 1942, a uniform system of accounting prescribed by the state authorities must be installed and in operation in all counties, townships, and other local units. By the terms of legislation enacted in 1935, Idaho counties are required to have biennial audits according to specifications prescribed by the state bureau of public accounts; while all county officers in Alabama are required to keep accounts and make reports in conformity to a uniform system prescribed by state authorities.[58]

Revenue and Taxation. During recent years, increased expenditures for relief, coupled with mounting delinquency in property-tax payments, have made it imperative that the states make new sources of revenue available to the local units. The necessity for such action has been es-

[57] *General Acts of Alabama*, 1935, nos. 300, 379; *Laws of Colorado*, 1935 (reg. sess.), ch. 158; *General Acts and Resolutions of Florida*, 1935, p. 165; *Laws of Indiana*, 1935, chs. 150, 173; *Statutes of Nevada*, 1935, ch. 44; *Laws of New Hampshire*, 1935, ch. 9; *Acts of New Jersey*, 1936 (reg. sess.), ch. 211; *Laws of Pennsylvania*, 1935, nos. 384, 386, 419; *Private Acts of Tennessee*, 1935 (reg. sess.), Vol. II, chs. 483, 759, 797; State v. Thatcher, 94 S.W. (2d) 1053 (Supreme Court of Missouri, 1936); A. E. Buck, "Municipal Budgeting," *Municipal Year Book*, 1937, pp. 21–25. See also *infra*, "State-Local Relations." The New Jersey statute, although constituting a step in the direction of orderly financial planning, will apparently require supplementary legislation if the purpose of the law is to be realized. See George A. Shipman and Harold J. Saum, *Changes Made by the Local Budget Act of 1936* (Princeton Local Government Survey, Nov. 23, 1936), p. 16.

[58] *General Laws of Alabama*, 1935, no. 26; *General Laws of Idaho*, 1935 (reg. sess.), ch. 80; *Kansas Session Laws*, 1935, ch. 275. In Oregon, a law of 1929 requiring the secretary of state to prescribe a uniform system of accounting for counties and other local government units was supplanted in 1935 by a statute directing that officer to prescribe systems of accounting and make periodic audits for such of the local units as elect to make use of that service. *Oregon Laws*, 1935 (reg. sess.), ch. 405.

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pecially acute in those states in which fixed limitations on local property levies have been imposed by statute or by constitutional provision. For the most part, the various states have met the need for additional local revenues by sharing with the local units the proceeds from certain state-administered taxes, by making direct grants to the localities from the state treasury, or by a combination of these methods. The taxes most commonly shared with the local units are those on sales, income, gasoline, and liquor.

During the biennium under consideration, California provided for distribution to counties and cities of fifty per cent of all license fees collected under the provisions of the state alcohol control act; while Oregon amended her law to provide for distribution to the local units of a larger portion of the receipts from the liquor tax. California also provided for apportionment to counties of a part of the proceeds from motor vehicle license fees; while the counties of Washington were allotted a share of the proceeds from the gasoline tax. Florida levied a tax on chain stores, the proceeds from which were to be distributed to the counties for school purposes; while Delaware levied a state-administered county income tax to provide revenue for relief purposes in New Castle county.[59]

In the field of state grants and subsidies may be mentioned a Kentucky statute appropriating funds to be distributed to the counties for highway purposes; a Florida act providing for an additional apportionment to counties from funds of the state racing commission; and a Wisconsin law providing for grants to counties for public-health nursing.[60] Moreover, in conformity to the requirements of the federal Social Security Act, the statutes of the period providing for county administration of old-age pensions, mothers' pensions, and pensions for the blind regularly provided for partial reimbursement of the local units by the state for expenditures made for those purposes.[61] Also of interest in this connection are laws of Colorado and Oregon providing for the distribution to counties of funds received from the federal government under the terms of the Taylor Grazing Act, and a law of Vermont providing for the distribution to towns of federal funds received under the Weeks law.[62]

[59] *Statutes of California*, 1935, chs. 330, 362; *Laws of Delaware*, 1935, ch. 12; *General Acts and Resolutions of Florida*, 1935, p. 193; *Oregon Laws*, 1935 (reg. sess.), ch. 427; *Session Laws of Washington*, 1935, ch. 111.

[60] *General Acts and Resolutions of Florida*, 1935, p. 980; *Acts of Kentucky*, 1936 (reg. sess.), ch. 5; *Wisconsin Session Laws*, 1935, ch. 556. See *infra*, "State-Local Relations."

[61] See *General Laws of Alabama*, 1935, nos. 448, 496; *Statutes of California*, 1935, chs. 633, 703; *Laws of Illinois*, 1935 (reg. sess.), p. 256; *Laws of Indiana*, 1936, ch. 3; *Acts of Louisiana*, 1936, nos. 33, 53, 57; *Laws, Resolutions, and Memorials of Montana*, 1935, ch. 170; *Laws of New Hampshire*, 1935, ch. 127; *Acts of New Jersey*, 1936 (reg. sess.), ch. 31; *Session Laws of Wyoming*, 1935, ch. 101.

[62] *Laws of Colorado*, 1935 (reg. sess.), ch. 123; *Oregon Laws*, 1935 (reg. sess.),

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Several states, with a view to alleviating the distress of hard-pressed property owners, enacted laws providing for installment payment of taxes, waiving penalties, and extending time of payment.[63] Florida established in each county a delinquent tax adjustment board vested with authority to compromise delinquent taxes on real and personal property for 1933 and previous years, the action of the county board being subject to review by a state board of appeals. Minnesota enacted a law designed to facilitate the control and sale of lands which have become public property through tax delinquency.[64]

Indebtedness. During the period under consideration, several states took action to liberalize the power of their local units to borrow for relief purposes. Thus, Ohio authorized the issuance of county relief bonds in anticipation of revenue from the public utility tax; Iowa provided that indebtedness incurred solely for relief purposes should not be construed as having been incurred for general or ordinary purposes; and Indiana enacted a statute designed to facilitate local borrowing for relief. Also in the direction of liberalizing local borrowing power is a proposed constitutional amendment in New York, which was given first legislative passage in 1935, to the effect that debts incurred by counties, cities, towns, and villages for certain designated revenue-producing utilities shall not be included in computing the debt limit of the issuing municipality.[65]

On the other hand, some states took action to restrict local borrowing. In North Carolina, for instance, a constitutional amendment proposed in 1935 and ratified in 1936 provides that, except for certain enumerated purposes, the legislature shall have no power to authorize counties to contract new indebtedness in any year in excess of two-thirds of the amount to which county indebtedness has been reduced during the preceding year, unless the contracting of such new indebtedness is made contingent upon the approval of the voters of the county. New Jersey's new local-budget law made more drastic the existing limitations upon the power of local units in that state to issue tax-anticipation notes and obligations secured by tax-delinquent property. Virginia provided that, after January 1, 1937, all bonds issued by counties and magisterial dis-

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ch. 120; *Acts and Resolves of Vermont*, 1935 (reg. sess.), no 220. See *infra*, "Federal-Local Relations."

[63] *Laws of Maryland*, 1935, ch. 387; *Public Acts of Michigan*, 1935, no. 57; *Session Laws of Nebraska*, 1935 (spec. sess.), ch. 15.

[64] *General Acts and Resolutions of Florida*, 1935, pp. 1305, 1311; *Session Laws of Minnesota*, 1935 (reg. sess.), ch. 386.

[65] *Laws of Indiana*, 1935, ch. 117; *Acts and Joint Resolutions of Iowa*, 1935, ch. 69; *Laws of New York*, 1935, p. 1917; *Legislative Acts and Joint Resolutions of Ohio*, 1935 (reg. sess.), ch. 571.

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tricts shall be in serial form, payable over a period of not more than thirty years in annual or semi-annual installments beginning not later than five years after the date of issuance.[66]

Purchasing. Some progress in the direction of improved purchasing procedure was made during the biennium. Central purchasing agencies were provided for Nassau county, New York; Allendale and Darlington counties, South Carolina; Cocke county, Tennessee; and Bryan and Decatur counties, Georgia. Purchases by Chilton and Madison counties, Alabama, were required to be made on the basis of competitive bidding; and purchases by Sullivan county, Tennessee, must now be authorized by the county judge or chairman of the county court. Four Maine statutes providing optional manager charters for as many towns provided that the town manager should act as purchasing agent. Wisconsin, by general law, authorized the appointment of purchasing agents in counties having a population of less than 250,000; while Indiana required that county highway materials and equipment be purchased on the basis of competitive bidding.[67]

The Fee System. Several states took significant steps, during the biennium under consideration, in the direction of limiting or abolishing the fee system of compensating local officials. In South Carolina, final legislative approval, following ratification by the voters, was given to constitutional amendments authorizing the general assembly to enact local or special laws fixing the compensation of county officers and requiring that

[66] *Acts of New Jersey*, 1936 (reg sess.), ch. 211; *Public Laws and Resolutions of North Carolina*, 1935, ch. 248; *Acts of Virginia*, 1936 (reg. sess.), ch. 372; George C. S. Benson, "State Constitutional Development in 1936," in this REVIEW, Vol. XXXI, pp. 280–285 (Apr., 1937); George A. Shipman and Harold J. Saum, *op. cit.*, pp. 7–11. Also of significance in its relation to the problem of local indebtedness is the decision of the United States Supreme Court (Ashton v. Cameron County Water Improvement Dist., 298 U. S. 513) declaring unconstitutional the Municipal Debt Readjustment Act passed by Congress in 1934. The operation of this act within any state was made contingent upon state consent, and during 1935 numerous state legislatures enacted legislation authorizing their local subdivisions to avail themselves of the provisions of the law. Although relatively few applications were made under the act for the readjustment of local indebtedness, it is probable that the mere existence of the act was influential in other instances in securing the consent of minority creditors to composition agreements. Cf. *Legal Notes on Local Government*, Vol. II, p. 10 (July, 1936).

[67] *Local and Special Acts of Alabama*, 1936, nos. 1, 45, 149; *Acts and Resolutions of Georgia*, 1935, pp. 580, 630; *Laws of Indiana*, 1935, ch. 145; *Private and Special Laws of Maine*, 1935, chs. 12, 48, 52, 58; *Laws of New York*, 1936 (reg. sess.), ch. 677; *Acts and Joint Resolutions of South Carolina*, 1936, nos. 745, 921; *Private Acts of Tennessee*, 1935 (reg. sess.), Vol. II, chs. 599, 780; *Wisconsin Session Laws*, 1935, ch. 150. At least two Tennessee counties saw the repeal of existing statutes providing for purchasing agencies therein. *Private Acts of Tennessee*, 1935 (reg. sess.), Vol. I, ch. 129; *ibid.*, Vol. II, ch. 606.

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fees collected by such officers be paid into the county treasury. Acting under authority of these amendments, the general assembly enacted legislation placing all or certain officers in several counties upon a salary basis.[68] In Texas, a constitutional amendment proposed by the legislature in its regular 1935 session and ratified by the voters in August of the same year requires that county officers in counties having a population of 20,000 or more shall be on a salary basis, and provides that in counties of less than 20,000 inhabitants the respective commissioners' courts shall determine whether county officials shall be compensated by fees or salaries. The amendment directed the legislature to provide legislation for carrying its provisions into effect, and a statute for that purpose was promptly enacted.[69]

A constitutional amendment proposed and ratified in 1935 empowers the legislature of Alabama to regulate the compensation of tax assessors, tax collectors, probate judges, circuit clerks, sheriffs, and registers of chancery courts in the counties of Calhoun and Tuscaloosa, and to place such officers on a salary basis in lieu of fees. The proposed constitutional amendment in Pennsylvania providing for consolidation of Philadelphia county with the city of Philadelphia prohibits the use of the fee method of compensation by the consolidated city.[70]

On the other hand, attempts to place fee officers on a salary basis were defeated in certain instances by vote of the people or by court decision. Thus, the voters of Alabama, in the 1936 election, defeated a proposed constitutional amendment which would have placed the tax assessor, tax collector, and probate judge of Limestone county on a salary basis;[71] while special acts replacing fee-supported justices of the peace with salaried judges in Hamilton and Unicoi counties, Tennessee, were held invalid by the state supreme court.[72]

[68] *Acts and Joint Resolutions of South Carolina*, 1935 (reg. sess.), nos. 17, 20, 62, 188, 255; *ibid.*, 1936, nos. 655, 680.

[69] *General and Special Laws of Texas*, 1935 (reg. sess.), Vol. II, p. 1235; *ibid.* (2nd spec. sess.), ch. 465; J. Alton Burdine, "Abolition of Fee System," *National Municipal Review*, Vol. XXV, pp. 242–243 (Apr., 1936). By specific exception in the amendment, county surveyors, public weighers, and notaries public continue on a fee basis.

[70] *General Laws of Alabama*, 1935, no. 549; *Laws of Pennsylvania*, 1935, p. 1365; George C. S. Benson, "State Constitutional Development in 1935," in this REVIEW, Vol. XXX, pp. 275–279 (Apr., 1936). The Alabama amendment also authorizes consolidation of the enumerated offices.

[71] Charles W. Edwards, "Consolidation of Offices Defeated," *National Municipal Review*, Vol. XXVI, pp. 145–146 (Mar., 1937).

[72] *Private Acts of Tennessee*, 1935 (reg. sess.), Vol. I, chs. 213, 410; State v. Murrell, 169 Tenn. 688, 90 S.W. (2d) 945 (1936); Gouge v. McInturff, 169 Tenn. 678, 90 S.W. (2d) 753 (1936); Gouge v. McInturff, 170 Tenn. 72, 92 S.W. (2d) 198 (1936).

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V. HOME RULE AND OPTIONAL CHARTERS

The framing of county home-rule charters and the adoption of alternative forms of government were checked by judicial decision in Ohio and Nebraska, respectively. Under the home-rule amendment adopted in 1933, four of Ohio's large urban counties—Cuyahoga (Cleveland), Hamilton (Cincinnati), Lucas (Toledo), and Mahoning (Youngstown)—voted on home-rule charters in November, 1935. Of the four, only that for Cuyahoga was approved by the voters, and the charter so approved was subsequently invalidated by the state supreme court in a decision which seems to strip the constitutional home-rule provision of most of its effectiveness. A proposal for the election of a new charter commission was submitted to the Cuyahoga county voters in the 1936 election, but was defeated.[73] In Nebraska, the optional statute of 1933 under which Douglas county (Omaha) had adopted the manager plan of government to take effect January 1, 1937, was invalidated by the state supreme court on the ground that a county manager is a public officer and that, under the constitution, all county officers must be elected.[74] Home-rule charters were recently voted upon and rejected by the electors of San Luis Obispo and Kern counties, California, a revision of the Butte county charter being similarly defeated.[75]

Following the defeat, in the 1934 election, of a popularly-initiated amendment to the Michigan constitution which would have provided for county home rule, the legislature of that state proposed another home-rule amendment to be submitted to the voters in 1936. The defeat of this proposal in the 1936 election would seem to be a matter of little regret, since, as contrasted with the earlier proposal, it was of a thoroughly unsatisfactory nature, providing for no changes in county government which could not now be effected by statute.[76]

Most progress in the direction of permitting counties to adopt modern forms of government was made, during the period under consideration, in New York. In its 1935 session, the legislature of that state enacted the so-called Buckley optional-charter law authorizing the adoption by popular vote of either of two alternative forms of county government.

[73] State v. Krause, 130 Ohio St. 455, 200 N.E. 512 (1936); R. C. Atkinson, "County Charter Elections in Ohio," *National Municipal Review*, Vol. XXIV, pp. 702–703 (Dec., 1935); P. W. Wager, note in *ibid.*, Vol. XXV, p. 743 (Dec., 1936). For a comprehensive discussion of the court decision, see Earl L. Shoup, "Judicial Abrogation of County Home Rule in Ohio," in this REVIEW, Vol. XXX, pp. 540–546 (June, 1936).

[74] State v. Tusa, 130 Neb. 528, 265 N.W. 524 (1936).

[75] Charles Aikin, "Three Counties Reject Home Rule Charters," *National Municipal Review*, Vol. XXIV, pp. 537–539 (Oct., 1935).

[76] *Public Acts of Michigan*, 1935, p. 469; W. P. Lovett, "County Amendment Defeated," *National Municipal Review*, Vol. XXV, p. 742 (Dec., 1936).

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One of these, designated the "county president" plan, is essentially an application to county government of the strong-mayor form of city government; the second, or "county manager," plan provides for an administrative head of the county government to be appointed by the board of supervisors. Under both plans, the board of supervisors remains as the policy-determining body of the county. The manager form of government provided by the Buckley law was adopted by the voters of Monroe county (Rochester) in the November election of 1935 and became effective on January 1, 1936.[77]

In addition to enacting the Buckley law, the New York legislature in 1935 gave second legislative approval to a constitutional amendment directing the enactment of laws to provide alternative forms of government for counties outside New York City, and permitting the making of certain improvements in county government which had formerly been blocked by constitutional provisions.[78] Acting under authority of this amendment, which was approved by the voters in November, 1935, the state legislature in 1936 enacted the so-called Fearon-Parsons optional-charter law,[79] authorizing any county outside New York City to retain its existing form of government or to adopt any of five optional forms provided by the statute. These five optional forms consist of: (1) an elective county executive form; (2) an appointive county executive form with full administrative powers vested in the executive; (3) an appointive executive form under which the administrative powers of the executive are restricted by the requirement that all executive appointments be confirmed by the board of supervisors; (4) a "board of district supervisors" form under which the present board of supervisors will be replaced by a board of five, seven, or nine members (depending upon the population of the county) elected by districts; and (5) a board of supervisors form under which the existing form of governing board is retained but with additional powers of local legislation. It will be noted that only one of these plans—the fourth—permits the substitution of a small governing board for the present board of supervisors. Any one of the five alternative forms of government may be submitted to the county voters, upon proper petition, at a general election held in any odd-numbered year, the latter stipulation making impossible any action prior to 1937.

One definite accomplishment made possible by the recent amendment is already a matter of record in the form of the modern charter for Nassau county which was referred to the voters of that county by the regular legislative session of 1936, was approved by the voters in the November

[77] *Laws of New York*, 1935, ch. 948. See *supra*, "County and Town Executives."

[78] *Laws of New York*, 1935, p. 1909. The amendment was given its first legislative approval in a special session of 1934.

[79] *Laws of New York*, 1936 (reg. sess.), ch. 828.

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election of that year, and will become effective on January 1, 1938.[80] The reforms provided by the new charter, which was drafted by the Consultant Service of the National Municipal League at the request of the Nassau County Commission on Governmental Revision, include "a county executive (elective), a modern budget system, centralized and modernized assessment of taxes, county-wide administration of health and welfare functions, and a district court with professional judges to replace the justices of the peace."[81] The new charter has been sustained by the courts against the contention that it was invalid as constituting special legislation.[82]

VI. INTERGOVERNMENTAL RELATIONS

State-Local Relations. The years 1935 and 1936 witnessed a further extension of state control over the activities of counties and townships, as well as the enactment of a number of statutes enjoining coöperation by the local units with state authorities in various matters. For the most part, the new laws provided for control of the administrative type, in most instances merely making new applications of the devices already well known in that field.

Annual financial reports to state authorities were required of counties in Maryland and of counties, first-class townships, and poor districts in Pennsylvania. Local governmental units in California were required to make reports on outstanding indebtedness to the state department of finance, and thenceforth to report new issues of bonds to that agency. Colorado amended her local-budget law to provide a procedure for compelling local governments to file their budgets with the state tax commission. In Alabama, Idaho, Kansas, New Hampshire, and Pennsylvania, state agencies were given authority to prescribe forms to be used by local units in auditing, accounting, reporting, and/or budgeting, Alabama also providing for a biennial audit of county records by a state division of departmental and county audits.[83] Moreover, the new public-welfare

[80] *Laws of New York*, 1936 (reg. sess.), ch. 879. Another charter, referred to the voters of Nassau county by the legislative session of 1935, had been rejected in the 1935 election. See *Laws of New York*, 1935, ch. 938; Alfred Douglas Olena, "A Home Rule Charter for Nassau County, New York," *National Municipal Review*, Vol. XXVI, pp. 82–87 (Feb., 1937).

[81] Thomas H. Reed, "Nassau County Adopts a New Charter," *National Municipal Review*, Vol. XXV, p. 741 (Dec., 1936). See also Editorial Comment, *ibid.*, Vol. XXV, p. 312 (June, 1936).

[82] Burke v. Krug, 291 N.Y.S. 897 (1936); Matter of Burke v. Krug, 272 N.Y. 575, 4 N.E. (2d) 744 (1936).

[83] *General Laws of Alabama*, 1935, nos. 26, 218, 300; *Statutes of California*, 1935, ch. 82; *Laws of Colorado*, 1935 (reg. sess.), ch. 158; *General Laws of Idaho*, 1935 (reg. sess.), ch. 80; *Kansas Session Laws*, 1935, ch. 275; *Laws of Maryland*, 1935, ch. 355; *Laws of New Hampshire*, 1935, ch. 9; *Laws of Pennsylvania*, 1935, nos.

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laws[84] quite generally conferred upon the state welfare departments broad authority to prescribe forms for local welfare records and reports and to issue rules and regulations governing practices and procedures of local welfare offices.

State approval or review of the action of local authorities was provided for by various statutes. Louisiana appears to have been most productive of legislation of this type, new laws in that state requiring approval by the appropriate state agencies before parishes or other local units may borrow money, construct highways, or provide airports. In Indiana, all supplementary appropriations made by local governments after adoption of the regular budget must now be approved by the state board of tax commissioners. Wisconsin provided that disputes between counties relating to relief expenditures, which had previously been settled in the first instance by the courts, should thenceforth be settled by the state industrial commission, subject to appeal to the courts.[85] In conformity to requirements of the federal Social Security Act, most of the recently-enacted state statutes which provide for local administration of old-age pensions, mothers' pensions, and pensions for the blind authorize appeal to the state welfare department by persons denied assistance by the local authorities.

In several instances, state agencies were charged with the appointment or removal of local officers or employees, or with acting concurrently with local authorities in making such appointments or removals. Louisiana provided that the state civil service commission shall control the selection of appointive parish and municipal officers; that parish school boards may employ teachers only with the approval of a state school budget committee composed of the governor, state treasurer, and state superintendent of public education; and that deputy sheriffs may be dismissed, or have their duties or compensation changed, only with the approval of the state bureau of criminal identification and investigation. New Mexico provided that appointments of district health officers by district boards must have the approval of the state board of public welfare; while Alabama provided that license inspectors should be appointed by the governor in counties of over 150,000 inhabitants.[86] Several states, in providing

384, 386, 419. In Pennsylvania, state associations of local officers participate in the preparation of forms for use by the local units. See *supra*, "Organization of Local Officials."

[84] See footnote 7.

[85] *Laws of Indiana*, 1935, ch. 150; *Acts of Louisiana*, 1935 (2nd spec. sess.), no. 6; *ibid.*, 1935 (4th spec. sess.), no. 24; *ibid.*, 1936, no. 222; *Wisconsin Session Laws*, 1935, ch. 453.

[86] *General Laws of Alabama*, 1935, no. 265; *Acts of Louisiana*, 1935 (2nd spec. sess.), no. 25; *ibid.* (3rd spec. sess.), nos. 10, 21; *Laws of New Mexico*, 1935, ch. 131. Jefferson is the only Alabama county having a population of more than 150,000.

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for local welfare agencies of various types, stipulated that the personnel of such agencies, in its entirety or in part, should be selected subject to the approval of designated state authorities.[87]

The grant-in-aid continued to be used as a means of insuring minimum services by the local units and at the same time extending state supervision over the local governments. Alabama set up a new state "minimum-program fund" to assist counties and cities in maintaining a standard educational program and to aid in equalizing educational opportunities. The local school authorities, as a condition precedent to receipt of state aid, are required to levy all authorized local taxes for school purposes. On condition that the local units meet specified requirements with respect to financial participation, state grants to local governments were authorized in North Carolina for health purposes and in Virginia for relief. As indicated elsewhere, provisions for state grants for local welfare activities were common.[88]

In addition to the statutes providing for state supervision and control over local government, several laws were passed authorizing local units to coöperate with state authorities in carrying on certain activities. Thus, Oklahoma counties were authorized to coöperate with the state conservation commission in checking and preventing soil erosion; the counties of Oregon were authorized to coöperate with state and federal agencies in exterminating injurious and disease-bearing rodents; counties and other subdivisions in Alabama were empowered to coöperate with the state armory commission in the construction of armories; two Minnesota statutes provided for coöperation between the state bureau of criminal apprehension and local law-enforcement officers; while the new statutes with respect to state and county planning agencies quite generally enjoined coöperation between the state and local authorities.[89]

Federal-Local Relations. Inasmuch as the regulation of local government is, under the federal Constitution, in the hands of the respective states, there has been a tendency to ignore the growing list of contacts between the local units and the national government. Prior to the depression, contacts between national authorities and rural local governments were not numerous; but during the past few years, with financially

[87] *Acts of Arkansas*, 1935, p. 54; *Laws of Colorado*, 1936 (2nd spec. sess.), ch. 5; *Acts of Louisiana*, 1936, no. 14; *Laws of Maryland*, 1935, ch. 586; *Laws of North Dakota*, 1935, ch. 123; *Oregon Laws*, 1935 (spec. sess.), ch. 55; *Laws of South Dakota*, 1935, ch. 98; *Laws of Utah*, 1935, ch. 69; *Session Laws of Wyoming*, 1935, ch. 64.

[88] *General Laws of Alabama*, 1935, no. 295; *Public Laws and Resolutions of North Carolina*, 1935, ch. 142; *Acts of Virginia*, 1936 (reg. sess.), ch. 223. See *supra*, "Revenue and Taxation."

[89] *General Laws of Alabama*, 1935, no. 276; *Session Laws of Minnesota*, 1935 (reg. sess.), chs. 195, 197; *Session Laws of Oklahoma*, 1935, p. 343; *Oregon Laws*, 1935 (reg. sess.), ch. 259; *supra*, "Planning and Zoning."

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embarrassed states and localities looking more and more to the central government for assistance, these contacts have increased in both number and significance. This fact is evidenced by the enactment during recent years of a large number of state statutes authorizing local governmental units to coöperate with the national authorities in various ways and to meet federal requirements for financial assistance.

Of the statutes of this character enacted during the biennium under consideration, several were in the nature of general enabling acts authorizing counties or other local units to construct public-works projects with the aid of federal funds and to enter into the necessary contracts with respect thereto.[90] Others authorized action with respect to particular matters. Thus, Mississippi and Washington authorized the creation of flood-control districts to coöperate with the federal government in flood-control projects; Montana provided that counties might convey to the United States for national forest purposes lands acquired for delinquent taxes, and might deed county-owned land to either the state or the national government for park purposes; Alabama authorized local agencies to contract with federal authorities concerning electrification; Idaho empowered counties to coöperate with federal agencies with respect to reclamation, drainage, and drought relief; while counties in North Carolina were authorized to aid and coöperate in the planning, construction, and operation of federal housing projects.[91] An indirect relationship between the national and local governments is involved in the system of federal insurance of bank deposits. Under this scheme, the national government becomes the insurer of public as well as private funds deposited in banks, and some states have already authorized counties and other subdivisions to accept federal deposit insurance in lieu of other security for local funds.[92]

A problem of adjusting national and local interests which promises to become of increasing significance occurs when the federal government, in the course of its resettlement and conservation activities, purchases large blocks of land and thereby removes such property from the local tax rolls. It is said, for instance, that Oregon's recently enacted county consolidation law had its inception in the distress of Jefferson county, which is located in the dry section of central Oregon and in which the federal

[90] *Acts and Resolves of Massachusetts*, 1935, ch. 404; *Session Laws of Minnesota*, 1935 (reg. sess.), ch. 125; *Laws of New Hampshire*, 1935, ch. 113; *Laws of South Dakota*, 1935, ch. 161; *Public Acts of Tennessee*, 1935 (spec. sess.), ch. 11; *Session Laws of Washington*, 1935, ch. 107.

[91] *General Laws of Alabama*, 1935, no. 155; *General Laws of Idaho*, 1935 (1st spec. sess.), ch. 52; *Laws of Mississippi*, 1936 (reg. sess.), ch. 188; *Laws, Resolutions, and Memorials of Montana*, 1935, chs. 139, 150; *Public Laws and Resolutions of North Carolina*, 1935, ch. 408; *Session Laws of Washington*, 1935, ch. 160.

[92] *Oregon Laws*, 1935 (reg. sess.), ch. 30; *Laws of Pennsylvania*, 1935, no. 47.

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government had bought up a number of sub-marginal farms and removed the inhabitants;[93] and similar situations have been created in other states as a result of projects of the Resettlement Administration. That the federal government is not unmindful of this problem is indicated by a recommendation of President Roosevelt's Great Plains Committee that federal compensation to local governments, through the respective states, be provided in cases where acquisition of land by the federal government results in a shrinkage of the local tax base.[94] Moreover, provisions along analogous lines have already been incorporated in some federal statutes such as the Taylor Grazing Act providing for the withdrawal of certain grass lands from homestead entry and the leasing for grazing purposes of the lands so withdrawn. According to the terms of the Grazing Act, one-half of the amount received from grazing permits in any grazing district is to be paid annually to the state concerned, "to be expended as the state legislature may prescribe for the benefit of the county or counties in which the grazing district is situated."[95] It would seem that some such provision for a subsidy to the local units offers the most feasible alternative to geographic consolidation in instances where federal purchases reduce the tax base to a point where it will no longer support the necessary local services.[96]

[93] Charles McKinley, "Oregon Permits County Consolidation," *National Municipal Review*, Vol. XXIV, p. 352 (June, 1935).

[94] *The Future of the Great Plains* (Report of the Great Plains Committee), House Doc. 144, 75th Cong., 1st Sess. (Feb. 10, 1937), pp. 78–79.

[95] 48 *Stat. at. L.* 1269. See *supra*, "Revenue and Taxation."

[96] For some constitutional aspects of the problem involved in such purchases, see D.S.M., "State Taxation of Federal 'Proprietary' Instrumentalities," *Temple Law Quarterly*, Vol. XI, pp. 383–395 (Apr., 1937).

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Governmental and Party Leaders in Fascist Italy.* Study of the governmental and party leaders of Italy may contribute to our understanding of the Fascist state, whether we are concerned with public law, comparative government, or comparative politics. The application of the rules of law by any public law agency is affected by the characteristics of those who constitute the agency. Agencies of comparable legal authority exercise their discretion differently when they are differently related to the social context in which they operate. Whatever affects the relative strength of the groups with which an agency is affiliated affects the relative strength of the agency. Hence it is important to ascertain the class, skill, personality, and attitude characteristics of officials in relation to the composition of the community as a whole.

The present analysis of Fascist Italy therefore begins by classifying the agencies of the Italian state into those which, when examined from the viewpoint of public law, are "rising," and those which are "falling" (or at all events not rising). We shall eliminate from consideration those agencies consisting of a single individual, like the king and the chief of the government. Among the pre-Fascist organs of government, two have risen: the cabinet and the prefects. The cabinet has attained more freedom from the control of Parliament, and widened its legislative scope. The prefects have more authority, including direct control over local government. The following organs of pre-Fascist Italy have fallen (or not risen): Senate, Chamber, ministers of state, and podestá. All of the new agencies introduced by the Fascists are obviously "rising" (when compared with pre-Fascist institutions).[1]

I

Much of the material assembled in this study of governmental and party élites[2] is on public record. The communiqués of the *Ufficio Stampa* (later the Under-Ministry and finally Ministry for the Press and Propaganda) are usually short and matter of fact. The editorial comment which follows a biography often yields more information than the biography, because the official news stresses the relationship between the individual and his new job, and the editorial eulogy often provides more intimate

* The assistance of the Social Science Research Committee of the University of Chicago is gratefully acknowledged.

[1] For basic distinctions, reference may be made to Santi Romano, *Corso di Diritto amministrativo* (1931), and Oresta Ranelletti, *Elementi di Diritto Pubblico Italiano* (1933).

[2] The term *élite* is used in no invidious or romantic sense. It designates those who exercise the most influence in a given situation in which influence is appraised, for purposes of analysis, in a determinate way.

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TABLE 1

CLASS ANALYSIS

O = origin *P = present status*	*Number of Cases*	*Proletariat*		*Lesser Bourgeoisie*	*Plutocracy*	*Aristocracy*
Rising Agencies						
Cabinet	24	O	3	12	7	2
		P	0	0	20	4
Grand Council	9	O	0	7	1	1
		P	0	0	7	2
Party Executive Com.	7	O	0	6	0	1
		P	0	2	4	1
Provincial Party Sec.	66	O	3	50	9	4
		P	0	20	42	4
Chief Exec. Nat'l Unions and Associations	12	O	0	10	1	1
		P	0	0	11	1
Prov. Secs. Union Agric. Workers	53	O	0	53	0	0
		P	0	53	0	0
Prov. Secs. Union Industrial Workers	51	O	0	51	0	0
		P	0	46	5	0
Prov. Secs. Union Commercial Workers	43	O	4	39	0	0
		P	0	43	0	0
Prov. Secs. Employers Associations	43	O	0	26	12	5
		P	0	4	34	5
Declining Agencies						
Senate	190	O	3	87	54	46
		P	0	60	78	52
Chamber	187	O	16	93	50	28
		P	0	95	64	28
Ministers of State	16	O	0	6	3	7
		P	0	1	7	8
Podestá	38	O	3	5	18	12
		P	0	3	23	12

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details. The Italian *Who's Who* (*Chi'e? Dizionario degli Italiani d'oggi*) is more devoted to literary than to political figures. A special dictionary concerned wholly with politicians (*La Nazione Operante*, Edoardo Savinio, Milan, 1934) contains three thousand biographies and is indispensable for the minor hierarchies. Supplementary details have been gleaned from local publications and interviews.

Critical comparison of sources has been relied upon to reduce the distortions which arise from tendencies to reconstruct biography to fit the values of the new order of things. How far this revision may go is shown by some sporadic cases of politicians who moved their birthplace closer to the cradle of Fascism and copied the encomiums appropriate to Romagna. No biography of Mussolini forgets to play on the Romagna and the Romagnolo, for popular tradition has it that Romagna is the country of sunshine, wheat, and wine, and the Romagnolo are bloody, fierce, and picturesque.[3]

Table 1 shows the number of cases tabulated in this investigation, and the data relating to class and skill. The number of cases reported does not necessarily correspond to the number of offices, since no person has been counted twice. He has been assigned to his most important office. *Il Duce* has not been included. In order to emphasize the more active elements in Parliament, the whole membership has not been studied. The 190 senators who have taken the most active part in the senatorial sessions since 1929 are included, and the 187 deputies ratified in the plebiscites of 1929 and 1934 are reported. In general, the data depict the situation prior to the Ethiopian war.

For purposes of this investigation, four terms have been used to designate class origins and present status. Aristocracy includes persons from families with titles of nobility and persons who have acquired titles in their own right (Fascist and pre-Fascist). Plutocracy covers persons enjoying high incomes. When the individual is among the wealthy few in his region, he is included among the plutocracy, although he may not qualify from the standpoint of the nation as a whole. About 15 per cent of those called plutocratic in this list would be excluded if we were to classify them according to the national income pyramid. The lesser bourgeoisie takes in everyone who falls short of inclusion in the plutocracy, but who stands outside the proletariat. Skilled workers, professional persons of middle or low income, independent business men, and executives of middle or low income are thus considered lesser bourgeoisie. The proletariat includes unskilled workers in industry and agriculture. At least 95 per cent of the aristocracy are sufficiently wealthy to be classified

[3] A representative biography in this vein is *L'Umo Nuovo* by Beltramelli (Mondadori, Milan).

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TABLE 2

SKILL ANALYSIS

O = *original skill*
P = *present skill*
1 = manual and semi-skill
2 = engineering
3 = physical science
4 = medicine
5 = violence
11 = no skill

E = *skill by which entry made into politics*
6 = ceremony
7 = bargaining
8 = organizing
9 = propaganda
10 = attorneys

		1	2	3	4	5	6	7	8	9	10	11
Rising Agencies												
Cabinet	*O*	2	1			4	2	1	5	4	5	
	E		1			7	2		5	4	5	
	P					3	2	2	8	4	5	
Grand Council	*O*	1	1							2	3	2
	E					2	1		3	2	2	
	P						1	1	3	2	2	
Party Executive	*O*	1	1		1				1	1	2	
	E							1	3	1	2	
	P							1	3	1	2	
Prov. Party Secretaries	*O*	1	3	4	4		4	1	12	10	13	13
	E		3	2	2	29	4		12	8	6	
	P	(all exercise 5, 8, 9)										
Chief Ex. Nat'l U. and Assoc.	*O*	1		1				3	2	3	2	
	E							3	4	3	2	
	P	(all exercise 7, 8)										
Prov. Sec. Agric. Wkrs.	*O*			4		2		24			5	18
	E					7			37	8	5	
	P	(all exercise 7, 8, 9)										
Prov. Sec. Ind. Wkrs.	*O*		2	1		1			26	7	14	
	E			1		8			37		5	
	P	(all exercise 7, 8, 9)										
Prov. Sec. Commer. Wkrs.	*O*	6				3		13	2	2	5	12
	E					7			31		5	
	P	(all exercise 7, 8, 9)										
Prov. Sec. Empl. Assn.	*O*		4	3		2		19		5	10	
	E					2	2	19	7	3	10	
	P	(all exercise 7, 8, 10)										

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TABLE 2—*Continued*

		1	2	3	4	5	6	7	8	9	10	11
Declining Agencies												
Senate	*O*		8	4	10	20	32	10	15	18	73	
	E	(Same)										
	P	(Same)										
Chamber	*O*	(Missing)										
	E	12	17	2	8	27	20	19	18	23	41	
	P	(Same)										
Ministers of State	*O*		1			3	7		1	9	3	
	E					3	7		1	2	3	
	P	(Same)										
Podestá	*O*		3	1	2	5	14	3	3	1	6	
	E	(Same)										
	P	(Same)										

with the plutocracy, although double classification is not used in this report.

Table 2 exhibits the data about skills, which are defined as teachable and learnable operations. Skills are classified into those acquired and exercised before entry into politics, skills bringing the individual into politics, and present skills. In each of these sub-categories, the principal skill is recorded and other skills are omitted. Most of the categories are self-explanatory. Skill in ceremony is perhaps the most novel. It includes persons who are masters of etiquette, like aristocrats or retired army officers and high officials. It also includes individuals who have high symbolic value because they stand for some traditional distinction with which the new régime desires to associate itself (like descendants of illustrious personages). A third and smaller sub-category refers to individuals who, having attained eminence (like a famous scientist or engineer), are attached to some official agency as a symbolic gesture. Bargaining is a distinctive skill of those engaged in business; organizing refers to the coördination of non-profit-making activities, public or private. Propaganda specialists include newspaper men, personnel of information offices, and teachers of controversial subjects. The term "attorneys" includes bar and bench.

II

The outstanding contrast between rising and declining agencies is the lesser bourgeois origin of the personnel of the rising agencies. Three-fourths of the provincial party secretaries, and an overwhelming propor-

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tion of all other Fascist party agencies, come from the lesser bourgeoisie. Half the cabinet is from this social formation. Less than a seventh of the podestá, a declining agency, spring from the lesser bourgeoisie, and only a little over a third of the ministers of state. Half of the Senate and Chamber cases derive from this class.

There is evidence of a slight recovery of aristocracy under Fascism. Table 3 gives the percentage of deputies in the Chamber who were aristocrats:

TABLE 3

ARISTOCRATS IN THE CHAMBER OF DEPUTIES[1]

Year	*Per cent*	*Year*	*Per cent*
1861	37.6	1919	5.7
1904	19.5	1921	5.4
1909	18.1	1924	7.5*
1913	15.3	1929	9.0**

[1] Ubaldo Baldi-Papini, "Le condizioni presenti della Nobilita italiana," *La Nobilita della Stirpe*, II, 1 (1932), p. 141.

* First election after the March on Rome.

** First plebiscite.

Fifteen per cent of our sample of the Chamber elected in the plebiscite of 1934 are aristocrats. The new régime has conferred titles of nobility sparingly, although somewhat more freely than under the Liberal order. Biographers carefully point out (particularly when the aristocracy is old or the title ranks high) that the subject is a nobleman who, "instead of . . . " pursuing a life of leisure and sport, has devoted himself to public service. The merit of activity of this kind is always underlined for one of aristocratic lineage.

Leaders of proletarian origin are sporadically found, which continues the situation under the pre-Fascist régimes.[4] The extent to which the lesser bourgeoisie contributes to the present plutocracy exhibits the opportunities for climbing which have been afforded by the rising agencies.

To choose, almost at random, typical careers of those who have risen from the lesser bourgeoisie to the new plutocracy:

Renato Ricci, born in 1896 in Carrara; war volunteer; member of Fascist party since 1919; organized a local of the party and rose to be vice-secretary of the national party; initiator and organizer of the Fascist youth movement; leader of governmentalized sport activities; became under-secretary of education, thus controlling physical education all over Italy; member of the cabinet.

[4] Roberto Michels, *Storia critica del movimento socialista italiano* (Florence, 1921), Chap. 6.

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Rino Parenti, born in 1895, in Milan; non-commissioned officer during the war; became Fascist in 1919, participating in local squadrist action; constantly held local party jobs; federal secretary for Milan.

Cases typical of other careers:

Sampoli Aldo comes from a lesser bourgeois family and, although a federal party secretary for Siena, remains lesser bourgeois. Born in 1898 in Siena; lieutenant during the War; joined party in 1921; held jobs in local public institutions.

Ugo Cavallero comes from a very modest family and was made a count in 1928; born in 1880 in Casale, province of Asti; entered military academy and fought during the War; in 1918, became general; after War, became director of the Ansaldo of Genoa, an iron and steel concern manufacturing armament; appointed senator in 1926, and then called to the Ministry of War. When in 1928 he left the ministry, he was named count.

Pompeo Cattaneo, born in 1885 into a wealthy family of Pavia; decorated with a war cross; joined party in 1921, and remained in local politics; cheese manufacturer and secretary of the provincial employers' association for commerce.

Marquis Mario Laureati, born in Ascoli-Piceno in 1867, of the most outstanding noble family of the province; entered military school and fought in the first Ethiopian, Turkish, and World Wars, retiring as general; joined party in 1921; became secretary of employers' association for agriculture.

Edmondo Rossoni, born in 1882 in Ferrara into proletarian family; emigrated to United States, where he worked as a track laborer for railroads in Pittsburgh, Chicago, and New York; prominent in the radical labor movement among Italians in America, he later became an exponent of socialism with nationalistic coloring; organized the labor unions on a national scale under the Fascist régime; an exponent of the syndicalist versus the corporative tendencies; was the *duce* of the labor unions and publisher of *Lavoro Fascista;* later under-secretary of the interior and then secretary of agriculture; draws salaries from the *Banca del Lavoro,* from several social insurance institutions, and from the sea salt corporation of Italian Somaliland.

Isidoro Martinelli, born in 1897 into a proletarian family of Brescia; fought in the War as a private; worked in a bakery and organized bakery workers; as a syndicalist, joined the Fascist party in 1923; became provincial secretary of the union of commercial workers (modest income).

III

Possibly the outstanding revelation of the skill analysis is the relatively narrow recruiting base of the rising agencies. The personnel either has no original skill or wields a skill very closely connected with the functions performed in the party or governmental hierarchy. The older agencies, in addition to skill in organization, are recruited from a wider variety of specialties. In a sense, the new personnel made their own jobs through the

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organization of the party and the seizure of governmental authority. The new agencies are thus staffed by a highly specialized governing group.

Conspicuous, of course, is the importance of informal violence as a means of entering politics. Observe, for a striking instance, the provincial party secretaries, twenty-nine of whom particularly distinguished themselves in the squadrist phase of Fascism. Most of these had served in the War, and many of them had become officers, rising to a social status higher than they had enjoyed before. After the War, they were unable to live up to the new standard of life which they had come to demand; hence the bitter resentment from which direct action sprang.

Most of these men no longer have to do mainly with specialized violence, although each of the provincial party secretaries is head of the Fascist youth organization in his province. Civil administrative tasks absorb most of their energies.

As the internal organization of the centralized régime has consolidated, careers have become more regularized (which is to say, bureaucratized). There is a growing tendency for persons to be appointed federal secretary in provinces where they have never been active in politics, thus gradually transforming the party itself into a true bureaucracy. Under such conditions, there is less possibility that the central party leadership can be challenged effectively by local party machines. Among the provincial party secretaries, no instances are to be found of persons who joined the party after 1924; most of them were active before the March on Rome. The future of this privileged group is determined chiefly by the central party figures.

There are now few examples to be found of new men who enter party or governmental positions without an original skill of some kind. A university degree has become increasingly necessary for the corporative appointments. Some of the agencies conduct rigid competitive examinations. These offices are not civil service positions, though the distinction has little practical significance. Somewhat less certainty of tenure is compensated by higher emoluments and prospects of more rapid advancement.

It should not be ignored that the older bureaucratic agencies have been infiltrated by persons who owe their careers to Fascist party service. In 1928, the diplomatic and consular services were flooded with party men (the *ventottisti*), such as Cantalupo, Bastianini, Mazzolini, and several consuls-general. Among the first-class prefects, we find 22 (of 49) appointed from outside the administration. Nine of these have records of vigorous squadristic action (Foschi, Tamburini, Uccelli, for example). Most of the high bureaucracy in the Ministry of Corporations originated outside the government service.

Skill in ceremony is very prominent in the case of the podestá, a de-

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clining agency. The decline of local government in Italy has meant an enlarging sphere for the prefects and the provincial party secretaries. As a compensation for the loss of effective local control, the podestá have been chosen from individuals of local eminence. Both the Senate and the ministers of state show a substantial proportion of ceremonial personages. It will be noticed that the Chamber has 17 engineers. No doubt it would be consistent with our analysis of ceremony to include all of these in the ceremonial category. They owe their preferment to their symbolic significance in the ideology of Fascism, which has glorified the technical man at the expense of the "windbags" of the democratic parliament. Despite all the emphasis, however, it is interesting to notice that the engineers are few and far between in the most effective agencies. They are still footmen of the chariot of state, not chauffeurs.

Despite the diatribes which have frequently been directed against attorneys, their number has not declined and their rôle in the state appears to be about what it was before. The number of lawyers is now restricted, but the number of students taking the bar examinations is very large. The law schools actually train most of their men, not for the private practice of law, but for posts in the government. In this connection, it may be observed also that the professors of law, philosophy, and social science have been reduced to their pedagogical function. Before the Fascist revolution, the professors contributed a very high proportion of political leaders to Italy; indeed, 85 per cent of all of the prime ministers were professors. Thus far, professors (of law and education, for example) have been named only to specialized ministries.

Although journalists have been frequently and fervently praised, they have been practically bureaucratized by the establishment of the Ministry of Propaganda and the Syndicate of Journalists. Editorships of important newspapers have occasionally been treated as party spoils.

The importance of skill in bargaining has declined with the general decline in the amount of business left in private hands. The manual and the semi-skills contribute infinitesimally to the leadership of government and party. The 12 members of the Chamber who fall in this category are chiefly of ceremonial significance.

Representative careers include the following:

Renzo Chierici, born in 1895 in Reggio, Emilia; lesser bourgeois family; lieutenant during the War; joined party in 1919; went to Fiume with D'Annunzio, later identifying himself with the Balbo group; perhaps the best known squadrist in Italy; established himself in Ferrara, becoming provincial party secretary.

Giuseppe Avenanti, born in 1898 at Arcevia, province of Ancona, of modest bourgeois parents; volunteered in the War and became lieutenant; joined party in 1919, engaging in local squadrist and journalistic activity;

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became provincial party secretary for Ancona; transferred as party secretary to Zara (apparently on account of shady activities); later transferred as federal secretary to Gorizia.

Renzo Morigi, born in Ravenna in 1895; corporal during the War; comes from fairly wealthy landowning family; joined party in 1919, and led squadrist action throughout region of Emilia; very proud of his Romagnolo descent; world's pistol-shooting champion, Los Angeles Olympic Games, 1932; provincial secretary of Ravenna and actual boss (*ras*); several times connected with central committee of the national party.

Agostino Podestá, born in Novi, province of Alessandri, in 1906; parents were of the lesser bourgeoisie; law student; joined party in 1920; participated in squadrist activity; later organized university students; took J. D. and became provincial party secretary for Verona.

Paolo Boldrin, born in Padua in 1906 of lesser bourgeois family; joined party in 1922; shared squadrist activity and organized students; took Ph.D. later and became provincial party secretary for Padua; docent in public law, University of Padua, and author of scholarly publications.

Vittorio Casaccio, born in 1896, in Ragusa, of modest bourgeois parents; lieutenant during War; Nationalist until 1923, when Nationalists merged with Fascists; professor and dean in local college; organized local section of the Fascio; holds a doctorate in literature; provincial party secretary for Ragusa.

Epaminonda Pasella, born in 1875 in Pombino; modest family origins; engineer in royal navy, serving in this capacity during the War; joined party in 1919, organizing seamen's union, coöperating with Costanzo Ciano; provincial party secretary for the island of Elba.

Nino Vicari, born in Pesaro in 1894, of lesser bourgeois family; captain in the army during the War; later employed in postal service; active in propaganda and newspaper work, and made honorary member of the party in 1923; provincial party secretary for Parma.

Francesco Cortiglioni, born in Pesaro in 1898, of rather well-to-do family; served in war as lieutenant; later engaged in family wholesale grocery business; joined party in 1924; provincial party secretary for Pesaro.

Rodolfo Vagliasindi, baron of Randazzo, born in 1887 at family seat at Randazzo, province of Catania; served as captain in the War; as Nationalist, took part in local politics; joined Fascist party in 1921; comes from family of wealthy landowners and is himself actively engaged in agriculture; took a doctorate in chemistry and has published scientific contributions; provincial party secretary for Catania.

Prince Michele Spadafora, born in 1874 in Palermo of one of the wealthiest and most noble families of Sicily; took doctorate in jurisprudence; joined Fascist party in 1924; podestá of Palermo.

Count Pier-Ludovico Occhini, born in 1874 in Arezzo; wealthy landowning and noble family; served in War as officer attached to propaganda

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services; Nationalist until 1919, when joined Fascist party; holds doctorate in literature; contributor to and editor of several art reviews; aesthete and poet of the D'Annunzio school; interested in local history and art; podestá of Arezzo.

Gugielmo Marconi, born in Bologna in 1874; father, Giuseppe Marconi, mother née Annie Jameson; family wealthy; passed early life in Italy and England; early experiments worked out on his family estate, Pontecchio, and in England where first successful results were obtained; aided by both Italian and English governments; recipient of several honorary degrees and Nobel Prize, 1909; senator, 1914; delegate to Versailles Peace Conference, 1919; 1928, named president of National Research Council; 1929 named Marquis; September, 1930, president of the Royal Academy and member of Fascist Grand Council.

Alessandro Mazzucotelli, born of poor parents in Lodi in 1865; began as a blacksmith's helper; became independent iron worker; established himself in a country house near Milan; interested in popular education and inaugurated the biennial exposition of decorative arts in Monza; has been appointed commissar of the arts for Milan and elected a member of the Chamber of Deputies; has attained international renown in his craft.

Among the less readily defined skills which have been the basis of successful careers in the Fascist state is skill in "fixing." The fixer is a negotiator who enhances his private income by exercising, or seeming to exercise, governmental and party influence. He may be put on the board of directors of a corporation in the expectation that he will prevent the government or the party from making trouble for the corporation; he may be put on the board at the direct initiative of the political leaders themselves.

The fixer is prominent in Italy because monopoly has almost, but not quite, supplanted competition, and all organized hierarchies are not quite coördinated in a totalitarian unity. The fixer is not a simple broker who brings persons of equal bargaining power together to make a deal according to publicly understood rules. He is the go-between when the parties to an arrangement must consider many other matters than simple profit. He plays a part when a resort to violence or to coercive pressure may occur at different stages of the transaction. He handles affairs which would subject the parties to obloquy if publicly exposed.

Fixers tend to stabilize the existing state of tension between private and public hierarchies by building up vested interests in existing ambiguities. Owing to the confidential nature of the transactions mediated by the fixers, it is impossible to arrive at a satisfactory objective estimate of the relative importance of this skill. It is plain, however, that politicians of the second and third rank very commonly trade on their supposed power. This applies particularly to the members of the rather innocuous Chamber of Deputies and of some of the unions and associa-

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tions. Owing to the great centralization of the party and government, the fixer functions as a go-between who seeks to adjust local to central interests. The growth of the newly rich members of the Fascist party is often to be attributed to income derived from fixing.

Here are a few examples:

X. A modest lawyer in an important industrial center; a brother occupies a high position in the party and the government; hence he has been generally assumed to exercise a considerable degree of influence; by using the name of his brother, he has been able to settle controversies, often very delicate and important, between unions and associations, industrial firms and banks.

Y is a corporation lawyer who has a fairly high rank in the party and the government; through his political reputation and connections, he settles a great many cases out of court, cases which are referred to him solely because he is important.

Z was a fairly prominent industrialist who felt apprehensive for the security of his business; at the beginning, was not sympathetic with Fascism, but joined the party after 1925 in order to protect himself; became very active in politics, financing his own campaigns; having attained some prestige in politics, he used his position not only to protect his business but to extend his connections; corporations appointed him to their boards of directors, and he extended the range of his operations on a national scale.

IV

Another important aspect of governmental and party leadership is the degree of ideological incorporation in Fascism. To some extent, this can be shown by studying the length of time that the members of different agencies have been identified with the Fascist party, and the nature of their previous party affiliations. By Fascists *della prima ora* (from the first hours), we mean those who joined the party before the March on Rome in 1922, and had no previous party connections. The Nationalists supplied many members of the Fascist party before March, 1923, when the older party officially amalgamated with the Fascists. Some Liberals enlisted under the emblem of Fascism before October, 1922. (The date, August, 1922, is taken for the northern provinces; this marks the successful breaking up of the general strike in these provinces.) The Liberals were the right wing of the old Parliament (Monarchists, Constitutionalists, Liberals, Conservatives, Democrats). Some of them passed over to Fascism between the March on Rome and the establishment of the dictatorship, January 3, 1925, which followed the Matteoti crisis. Some joined afterwards, when adherence to the Fascist party had become practically compulsory.

The members of the Popular (Socialist-Catholic) party who went over to Fascism can be grouped into the three periods used for the Liberals.

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The same subdivisions likewise apply to the Socialistic groups (Syndicalists, Official Socialists, Reformists, Maximalists, Communists).

Table 3 is constructed to show these differences.

TABLE 3

PARTY ATTITUDES

1. Fascisti della prima ora, no previous affiliations.
2. Nationalists
   a. Fascist before March, 1923.
   b. Fascist after March, 1923.
3. Liberals
   a. Fascist before October, 1922.
   b. Fascist between October, 1922, and January 3, 1925.
   c. Fascist after January 3, 1925.
4. Popular
   (Same subdivisions as above)
5. Socialistic groups
   (Same subdivisions as above)

	1	*2a*	*2b*	*3a*	*3b*	*3c*	*4a*	*4b*	*4c*	*5a*	*5b*	*5c*
Rising Agencies												
Cabinet	6	1	3	3						6		
Grand Council	6		1	1								
Party Executive	6									1		
Pr. Pty. Secretaries	46	2	4		1							
Chief Ex. Nat'l Unions and Associations	3	1	2	1		1				4		
Declining Agencies												
Chamber	113	3	9	5	13	33		2	3	6		
Ministers	1	1	1		3	6						
Podesta'	7	4	2		12	3		5				

Note: Unaccounted for: Cabinet 5; Provincial Party Secretaries, 13; Ministers of State, 4; Podesta', 5 with possible Popular affiliations.

The declining agencies show the most laggards in affiliating themselves with the new and ultimately successful party. In rising as well as declining agencies, there are some examples of former Socialists who went through the same transition as Mussolini himself. In all cases, the change was made before the March on Rome. Ex-Socialist members of the cabinet include Razza (d. August 8, 1935), Rossoni, Benni, Tassinari, Cobolli, and Lantini. An ex-Socialist member of the executive committee of the party is Marinelli, who was a bookkeeper on the *Popolo d'Italia* from its founding in 1914. Chief executives of national unions and associations include Barni, Ciardi, Pala (socialistic leanings), Racheli. These four were trade union organizers. Members of the Chamber of Deputies include Bolzon, Ciarlantini, Lanfranconi, Malusardi, Orano, and Paoloni.

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The Italian Senate had practically no members of socialistic groups even before Fascism. More than half of the Senate was changed in 1922, and the new senators, if not party members, are at least in agreement with the régime. At least 23 of the 190 senators in our sample were formerly connected with the *Partito Popolare*, or were prominently identified with pro-clerical organizations. Five senators are ex-Socialists (Rossini was a trade union organizer; Professor Achille Loria introduced historical materialism into academic circles). No more than 10 senators can be identified as *Fascisti della prima ora*. Fascism glorifies youth, and the widespread recognition that the Senate is a declining, decorative post for old men means that appointment to it has been more resented than sought after by active leaders.

In considering the ideological characteristics of Fascism, it is of interest to discover the extent to which the party is recruited from the nation as a whole, or from particular regions. The higher party councils give extraordinary prominence to persons from Bologna and nearby provinces: Grandi, Manaresi, Biagi, Oviglio (Bologna); Balbo, Rossoni (Ferrara); and the *Duce* (Forli). During the formative years of Fascism, this region was the most active scene. The social structure of the area reveals some significant features. Some cities provided employment for urban proletarians; these cities were situated close to agricultural regions which depended upon city factories to process their products (sugar beets, hemp). In the production of these commodities, use was made of a large body of unskilled casual laborers (*braccianti*). Workers, both urban and rural, were organized, and the post-war years saw the high-water mark of union activity. The lesser bourgeoisie, except the section directly connected with the unions, were alienated by the dislocation of public services through frequent strikes, and by the improving status of the manual toilers. Small tradesmen were exposed to the ever-sharpening competition of the coöperatives, which were supported by the unions. Some degree of social disorganization was endemic in this region; illegitimacy rates, for example, were higher than anywhere else in Italy. The refineries in Ferrara were operated by corporations which were not locally owned; the city was constantly losing members of the rising bourgeoisie to other centers.

The farther down one goes in the party and governmental hierarchy, the more completely does the personnel become representative of the nation as a whole. Indeed, many persons are advanced chiefly because they are identified with localities rather than for conspicuous party service. The most striking cases are from Sardinia or southern Italy in general. In such instances, special emphasis is put on the local attachment.

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V

The data assembled here about the governmental and party leaders of Italy refine in some degree our picture of Italian, and indeed of world, developments. By comparing the rising and the declining agencies of Italian public law, we have ascertained the degree to which certain social formations are becoming more or less influential. Outstanding, of course, is the extensive contribution made by the lesser bourgeoisie to leadership in the state. Equally plain, however, is the extent to which a section of the lesser bourgeoisie rises to a plutocratic level of income, thus establishing vested interests which are in many respects contradictory to the logical development of a lesser bourgeois polity.

In terms of skill, the rising agencies exhibit the relative predominance of those who are devoted to the arts of government and politics in the narrowest possible sense. There are found many who owe their entire career to skill in violence, and who had no antecedent skill before their entry into politics. Party organization and party propaganda, with no previous skill acquisition, was the foundation of other careers. With the consolidation of the new régime, preliminary technical training assumes greater importance as the bureaucratizing tendencies of party and government manifest themselves. Among the less formalized skills, skill in fixing plays a prominent rôle. Totalitarian patterns of organization are not yet crystallized; hence private and public hierarchies continue in unstable relationship to one another. The fixers capitalize existing insecurities and develop strong vested interests in preserving present ambiguities.

The ideological integration of the state around the symbols of a single party has gone forward with the broadening local basis of party and government. The association of the older aristocratic and plutocratic formations with the activistic section of the lesser bourgeoisie has tended to conserve older values, and to militate against the emergence of distinctive practices.

The data here summarized are but a meager fraction of all that one might desire for developmental interpretation of political events. The *lacunae* are even more apparent when considered from the viewpoint of theories of political equilibrium. The facts given have not been related to many facts about the circumstances in which transformations occurred in Italy. Nor have they been presented in relation to an explicit description of the social structure of Italy. They do, however, constitute a step on the way toward relating public law agencies organized in particular ways to the social contexts in which they operate. The social formations have been plainly described with whose future the legislative and policy agencies of the Italian state are intertwined. Whatever affects the atti-

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tudes or the strength of these formations will affect the discretion and potency of the organs of government and party.

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Ministers of the Crown and the British Constitution. Notwithstanding the vital importance of the cabinet, it has been one of the anomalies of British government that this institution has heretofore been unknown to English constitutional law. Writers have said correctly that "neither Parliament nor the courts have provided for the cabinet and the prime minister. The whole system of cabinet government is founded not on laws but on practices . . . "[1] However, this view can no longer be held. In the session of Parliament concluded recently, an act was passed which laid down new principles pertaining to the executive. The cabinet, the prime minister, and the ministers of the crown have at last been recognized by statute and have been given a status in British constitutional law.[2]

The Ministers of the Crown Act, which was introduced in the House of Commons on March 23, 1937, consists of 12 clauses, or sections, supplemented by four schedules.[3] The act regulates the salaries of certain administrative offices; it provides for the payment of additional salaries to members of the cabinet whose salaries are less than £5,000 a year; it provides for the salary and for the pension of the prime minister; it provides a salary for the leader of the Opposition; and it clarifies the capacity of administrative officers to sit and vote in Parliament.

The act states that £5,000 is to be the annual salary payable to the Chancellor of the Exchequer, the eight Secretaries of State, the First Lord of the Admiralty, the President of the Board of Trade, the Minister of Agriculture and Fisheries, the President of the Board of Education, the Minister of Health, the Minister of Labor, the Minister of Transport, and the Minister for the Coördination of Defense.[4] An annual salary of £3,000 is made payable to the Lord President of the Council, the Lord Privy Seal, the Postmaster-General, and the First Commissioner of

[1] W. I. Jennings, *Cabinet Government* (New York, 1936), p. 1. Cf. W. R. Anson, *Law and Custom of the Constitution*, rev. by A. B. Keith (Oxford, 1935), pp. 12–13; also statement of Sir John Simon before the House of Commons on April 12, 1937 (*Parliamentary Debates*, Vol. 322).

[2] *Ministers of the Crown Act, 1937. I Edw. 8 & 1 Geo. 6.*

[3] *Parl. Debs.*, Vol. 321. The bill was based upon recommendation of select committees which reported in 1920 and 1930. See *Parl. Debs.*, Vol. 322, c. 639. House of Commons.

[4] *Ministers of the Crown Act, 1937, clause 1* and *part I* of *schedule 1*. These salaries and others mentioned in the act are subject to other provisions of the act.

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Works.[5] The Minister of Pensions is to receive £2,000 a year.[6] Subject to provisions of the act, parliamentary under-secretaries are to be paid salaries ranging from a maximum of £3,000 for the Parliamentary Secretary to the Treasury to a minimum of £1,200 for the Assistant Postmaster-General.[7] Junior Lords of the Treasury are to receive £1,000.[8]

Clause two of the act places limitations upon the number of persons who may receive salaries for holding certain offices. The number of secretaries of state may not exceed eight. The parliamentary under-secretaries in the case of the Treasury, the Foreign Office, the War Office, and the Admiralty are not to exceed two. For the Board of Trade, they are not to exceed three, including the Secretary for Mines and the Secretary of the Department of Overseas Trade. For the Air Ministry, the Board of Education, the Burma Office, the Colonial Office, the Dominions Office, the Home Office, the India Office, the Ministry of Agriculture and Fisheries, the Ministry of Health, the Ministry of Labor, the Ministry of Transport, the Scottish Office, and the Post Office, they may not exceed one. It is provided also that no more than five Junior Lords of the Treasury may draw salaries.

As stipulated by the act, membership in the cabinet will now carry with it a salary of £5,000, subject to the provisions of the act. Clause three states that ministers of the crown named in the act "if and so long as . . . a member of the cabinet" are to be paid that figure. If necessary, an additional sum will be paid which, together with the salary payable in respect of an office held, will amount to £5,000.[9] Those persons who are to be of cabinet rank are now to be designated by the publication in the

[5] *Clause 1* and *schedule 1, part II.*

[6] *Clause 1* and *schedule 1, part III.*

[7] *Clause 1* and *schedule 2* provide for salaries as follows: Parliamentary Secretary to the Treasury, £3,000; Financial Secretary to the Treasury, Secretary for Mines, and Secretary of the Department of Overseas Trade, £2,000; parliamentary under-secretaries to the Admiralty, Air Ministry, Board of Education, Board of Trade, Burma Office, Colonial Office, Dominions Office, Foreign Office, Home Office, India Office, Ministry of Agriculture and Fisheries, Ministry of Health, Ministry of Labor, Ministry of Transport, Scottish Office, and the War Office, £1,500; and the Assistant Postmaster-General, £1,200. The act also stipulates that "if and so long as there are two parliamentary under-secretaries to the Foreign Office, to the Admiralty, or the War Office, the annual salary payable to each of the two parliamentary under-secretaries may be of such amount as may be determined by the Treasury, but so that the aggregate of the annual salaries payable to both of them does not exceed three thousand pounds."

[8] *Clause 1.*

[9] This portion of clause three applies particularly to the following: Lord President of the Council; Lord Privy Seal; Postmaster-General; First Commissioner of Works; Minister of Pensions; Chancellor of the Duchy of Lancaster; and to "any Minister of the Crown to whom section two of the Reëlection of Ministers Act, 1919, applies, if . . . his salary as such is less than five thousand pounds a year."

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London Gazette of the date when a minister of the crown "becomes or ceases to be a member of the cabinet."[10]

The foregoing provisions as to salaries do not apply to the prime minister. His salary and pension are dealt with in clause four. The law reads that a salary of £10,000 shall be paid "to the person who is Prime Minister and First Lord of the Treasury." Further, former prime ministers are to receive a pension of £2,000 a year.[11] No person is eligible for this pension, however, "so long as he is in receipt of any pension under the Political Offices Pension Act, 1869, or any salary payable out of moneys provided by Parliament, the revenues of the Duchy of Lancaster, or the Consolidated Fund of the United Kingdom."[12]

A further departure in British constitutional practice is to be found in clause five, which provides that the leader of the Opposition shall receive an annual salary of £2,000. This salary will not be paid to him, however, if he is in receipt of a pension under this act. If he receives a pension under the Political Offices Pension Act, 1869, the salary payable under the present act will be reduced by a sum equal to the amount of such pension. The leader of the Opposition is defined as "that member of the House of Commons who is for the time being the Leader in that House of the party in opposition to His Majesty's Government having the greatest numerical strength in that House." If any doubt arises as to who shall be designated as leader of the Opposition, the Speaker of the House of Commons is to decide. For the purposes of this act, his decision will be final.[13]

Provisions which seek to prevent the payment of duplicate salaries are to be found in clause six. Except for those persons who, under the Ministers of the Crown Act, are entitled to additional salaries as cabinet ministers, "a person to whom any salary is payable under this act shall be entitled to receive only one such salary." If a person holds two or more offices, the salary paid him shall be in respect of the office of which the highest salary is payable. No person receiving a salary or pension under this act may receive payment in respect of his membership in the House of Commons.

All salaries payable under the present act are to be from funds provided by Parliament, except the salary of the leader of the Opposition. His salary and the pension payable to a former Prime Minister and First Lord of the Treasury are to be paid out of the Consolidated Fund.[14] The House

[10] *Clause 3.* See Sir John Simon's statement in the Commons, April 12, 1937. *Parl. Debs.*, Vol. 322.

[11] *Clause 4.* One who "before or after the passing of this Act, has been Prime Minister and has as First Lord of the Treasury taken the official oath prescribed by section five of the Promissory Oaths Act, 1868, shall be entitled to a pension of two thousand pounds a year."

[12] *Clause 4.* [13] *Clause 10.* [14] *Clause 7.*

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of Commons may, of course, reduce the salaries payable under the act except for those paid out of the Consolidated Fund.[15]

The portion of the act which simplifies the law as to the capacity of persons holding offices of profit to sit and vote in Parliament has eliminated certain inconveniences which have existed since Queen Anne's time. Previous requirements sometimes interfered with cabinet building because of the necessity of distributing posts in a prescribed manner between the two houses of Parliament.[16] The Ministers of the Crown Act provides that of the 17 persons included in part one of the first schedule, not more than 15 may sit and vote as members of the House of Commons.[17] Of the four mentioned in part two of that schedule, not more than three may sit in the House of Commons.[18] The number of parliamentary under-secretaries who may sit and vote there may not exceed 20.[19] If at any time the number of persons in each of the above categories who may be members of the Commons exceeds the limit set for each group, such persons shall not have their elections invalidated, but only those who held office and were members of the House before the excess occurred may sit or vote in the House until the number of ministers in each category shall have been reduced to the number provided for in this act.[20]

Although the Government was able to make use of its tremendous majority to secure the passage of the Ministers of the Crown Act without serious difficulty, the debates on the bill were not without interest. Some of the provisions precipitated a lively discussion, and opposition came from all parts of the House of Commons. There was general hostility toward any item that might possibly result in the enlargement of the cabinet. Some members took advantage of the opportunity to criticize the large salaries and fees paid to law officers of the crown. However, the portions of the bill which evoked most debate were those dealing with the amounts of the proposed salaries, the salary for the leader of the Opposition, and the added duties of the Speaker of the House of Commons.

The attempts of Liberal and Labor members of the Commons to obtain from the Government a promise to embark on a scheme of governmental

[15] *Clause 8.*

[16] The statement of Sir John Simon before the Commons on April 12. *Parl. Debs.*, Vol. 322.

[17] *Clause 9.* The 17 offices are above, in the list of those entitled to salaries of £5,000.

[18] *Clause 9.* To be found above, in the enumeration of those entitled to salaries of £3,000.

[19] *Clause 9.* These posts are indicated in footnote 7, *supra.*

[20] *Clause 9.* It is further provided that if any person included in the above categories "sits or votes in the House of Commons at a time when he is not entitled to do so by virtue of this section, he shall be liable to a penalty not exceeding five hundred pounds for each day on which he so sits or votes."

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reorganization in connection with the proposed recognition of the cabinet met with failure. At the second reading of the bill, Mr. Greenwood moved "that this House, whilst in favor of the removal of anomalies in ministerial salaries, provided that the aggregate charge is not increased, is of the opinion that a reconsideration of the machinery of government and of the allocation of ministers to departments should precede legislation on ministerial remuneration."[21] In support of his motion, Greenwood cited the need for administrative reform and added that if ministers' salaries were to be altered, "a prior consideration should be to rationalize the functions which those ministers have to carry out." Others felt that the only desirable type of reform was that which would see several ministerial posts abolished entirely.[22] From all parts of the House, there were speakers who regarded with misgivings any arrangement that might make possible a larger cabinet. Sir John Simon, in replying for the Government, indicated, however, that such was not the intent of the proposed bill. Stanley Baldwin, at that time prime minister, urged the adoption of the bill on its merits and argued that it should not be linked with other proposals for reform.[23] The contemplated revision of ministerial salaries, he said, was a subject which should have been dealt with long since. He gave it as his opinion that if this bill were not to be passed until there should have been governmental reorganization, it would be doubtful whether it would be enacted in the lifetime of any member sitting in the House. In the division which occurred, Greenwood's motion was defeated, 228 to 136.[24]

Notwithstanding Mr. Baldwin's admonition that the cabinet is "a body of equals," and that it was a "wrong principle" that its members should be unequally reimbursed, there was prolonged debate on the matter of general increased expenditures for salaries.[25] Attacks, though futile, were made against the bill as a whole because of the increased costs involved, and against specific offices on the grounds that all ministers were not required to perform equal duties.[26] Mr. Lees-Smith proposed an amendment that the salaries of cabinet ministers be fixed at £4,000 instead of £5,000.

[21] *Parl. Debs.*, Vol. 322.

[22] See the remarks of Mr. Mander, *ibid.*

[23] House of Commons, April 12. *Parl. Debs.*, Vol. 322.

[24] *Ibid.*

[25] *Ibid.*

[26] Repeatedly during the debate, members showed their displeasure with the allegedly high incomes received by the law officers of the crown through salaries and fees. Mr. Baldwin replied to the critics by reminding them that this was not the time to pronounce upon the merits of the existing practice where law officers were concerned. See, particularly, the debates on April 12 and 28. *Parl. Debs.*, Vols. 322, 323. See also the debate on June 3, as reported in the London *Times*, June 4, 1937. Sir Kingsley Wood promised for his cabinet colleagues that the matter of compensation for law officers would be given further consideration. *Parl. Debs.*, Vol. 323.

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It was suggested that cabinet members would then be compensated on an equal basis, and that this could be accomplished by increasing some salaries and by reducing others.[27] Other motions made sought to reduce the proposed salaries for the Parliamentary Secretary to the Treasury, the Lord President of the Council, the Lord Privy Seal, the Postmaster-General, and the First Commissioner of Works.[28] Others suggested that while general increases were uncalled for, the Prime Minister, the Chancellor of the Exchequer, and the First Lord of the Admiralty ought to be given higher salaries. Sir Archibald Sinclair moved that the Prime Minister's salary be £7,000 instead of the proposed £10,000.[29] He believed the smaller figure to be satisfactory, since the Prime Minister was to be given a pension of £2,000 upon leaving office. Sinclair felt also that a £4,000 salary level for ministers was sufficient. He opposed the proposed figures on the ground that rigid public economy was necessary. Labor spokesmen agreed with the opposition Liberals on this matter. Mr. Maxton, in speaking for the Independent Labor party, said that he could find no grounds for supporting a bill which would vote lavish salaries to ministers at a time when living and working conditions for the masses were intolerable.[30] Further, he could see no reason for paying ministers so much more than private members of the Commons. "The intellectual gulf," Maxton added, "between the cabinet minister and the man in his own party who is not a cabinet minister is a very narrow one. We know, of course, that it is always the best men in any particular party who go to form a cabinet; . . . but their superiority is not so very marked that it needs to be represented by the financial difference between £5,000 and £400."

Sir John Simon reminded the House, however, that those who had had experience in cabinet-making would recognize that the task of building a cabinet would be less difficult if the posts were on an equal salary basis. He urged that the clause be adopted as proposed. All of the opposition amendments were defeated, and the vote on having clause one stand as a part of the bill resulted in a Government victory, 176 to 94.[31]

There was general support in the Commons for the proposal to compensate former prime ministers. In fact, one Tory member, Captain Cazalet, desired that all cabinet ministers who had served for five years or more be given pensions. Although all former ministers were not provided for, it was generally agreed that a former prime minister ought to be cared for in some way so that years of service in public life would not

[27] *Parl. Debs.*, Vol. 323. House of Commons, April 28.
[28] *Parl. Debs.*, Vol. 323.
[29] *Ibid.* House of Commons, April 29.
[30] House of Commons, April 12. *Parl. Debs.*, Vol. 322.
[31] *Parl. Debs.*, Vol. 323. House of Commons, April 28.

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go unrewarded. The Labor opposition agreed with the Government on this point. Mr. Greenwood, in giving Labor support, said: " . . . it is no doubt right that any ex-prime minister, having borne the weight of responsibility as prime minister, should be relieved of the temptation of writing for the Hearst press in America or seeking to make adventitious gains by other means."[32] An amendment proposed by a member of the Conservative party that "a person receiving a pension as prime minister must have occupied that office for a period or periods amounting in the aggregate to not less than six months" was defeated.[33]

The proposed salary for the leader of the Opposition, which seemed like a startling innovation to many members of the Commons, is not a new practice in Anglo-Saxon government, as students of Canadian institutions know. Stanley Baldwin strongly supported this proposal. He pointed out that, aside from cabinet ministers, the one individual who could devote little time to other than political affairs was the leader of the Opposition. The Labor party, he said, from its very constitution, would be unlikely to have many members willing and able to undertake the task. Baldwin added that the same might be true of the Conservative party at some future date.[34] Labor, too, favored the proposal, although Greenwood insisted that the leader of the Opposition should, in no circumstances, become a tool of the Government. Greenwood professed to see in the salary for the leader of his party a "challenge to the totalitarian states" and a recognition of freedom of criticism and a bulwark of democracy.[35] Labor's enthusiasm in this matter was not shared by the Independent Labor party and by the opposition Liberals. Many Conservative members, too, expressed the view that the leader of the Opposition was not a part of the government machinery, and therefore was entitled to no salary. Mr. Pickthorn pointed out that the office was not an old or established one, and that, in any case, the government would be paying a man the electorate had indicated it did not want.[36] In reply, Sir John Simon stated that this clause was an integral part of the bill and reminded his supporters in the House that the leader of the Opposition was discharging a public duty in opposing the Government.[37] The clause was allowed to remain a part of the bill by a vote of 215 to 41.[38]

[32] *Parl. Debs.*, Vol. 322.

[33] House of Commons, June 3. Reported in the *Times*, June 4, 1937.

[34] In the Commons, April 12. *Parl. Debs.*, Vol. 322.

[35] George Lansbury, former leader of the Labor opposition, was outspoken in his criticism of this proposal. His argument was that all members of the House ought to be on an equal basis, and that no member, regardless of his position, should be given more money than any other member. See *Parl. Debs.*, Vol. 323, c. 643 ff.

[36] *Parl. Debs.*, Vol. 323. April 29, 1937.

[37] *Ibid.*

[38] *Ibid.*

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Some misgivings as to the wisdom of having the Speaker of the House of Commons, under certain circumstances, designate the leader of the Opposition were expressed by Conservative members. It was feared that the Speaker might be placed in a position where he would be criticized by the House. It was argued also that he might become embroiled in politics.[39] Some members pointed out that the practice in forming a new Government was for the crown to send for the leader of the Opposition. By virtue of this bill, it was said, the Speaker might indirectly have the power to designate the next prime minister. Two amendments—one to have the leader of the Opposition designated by resolution of the House, and the other to give that power to the committee on privileges—were withdrawn and the original proposal was not modified.

Before conclusion of the debate in the House of Commons, two other items called forth additional discussion. One dealt with the rather loose way in which the bill defined the cabinet. Cabinet status was to be determined by the publication of a list of names in the *London Gazette*. It was suggested that this was an inadequate way to indicate cabinet membership.[40] However, the suggestion that a document of appointment be used as evidence of cabinet membership, rather than publication in the *Gazette*, was not adopted. Mr. Mander then proposed an amendment to the bill which would have made it impossible for a person to be paid under clause one who was engaged in business as director of a public company, or in private practice in a profession. The author of the proposal manifestly thought that membership in the Government should be a full-time job. In reply, Sir John Simon said that such a proposal would work unnecessary hardship on many. He said that this matter had arisen before and that a declaration of the prime minister of the day on the subject had sometimes been made. In December, 1935, according to Sir John, Mr. Baldwin had indicated that the rule laid down by Sir Henry Campbell-Bannerman in 1906 would be followed. This rule required ministers to resign directorships, except honorary directorships and directorships in private companies. Further, the rule was laid down that "no minister must allow himself to spend time to the disregard of his public duties in the pursuit of private interests;" nor should a minister ever permit his duty and his private interests to conflict, since ministers had "exceptional means of information."[41] Mr. Mander was satisfied with this statement and withdrew his motion.

On June 3, 1937, the Ministers of the Crown Act received its third reading in the House of Commons and was adopted by a vote of 156 to

[39] See the remarks of Captain Balfour and Mr. Pickthorn, April 12, 1937. *Parl. Debs.*, Vol. 322.

[40] See the remarks of Mr. Kingsley Griffith, April 29, 1937. *Parl. Debs.*, Vol. 323.

[41] House of Commons, June 3. Reported in the *Times*, June 4, 1937.

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112. It passed the third reading in the House of Lords on June 29. The Lords did not concern themselves for long with the bill. The Lord Chancellor assured Lord Mottistone that the act did not require the leader of the Opposition to be in the Commons. It merely provided that the leader of the Opposition there should be paid, while in the House of Lords such a leader would give his services free.[42]

The Marquess of Salisbury was startled by the provision that a pension should be paid to one who had been prime minister and First Lord of the Treasury. He pointed out that for years the Treasury and the Commons had been associated in the general mind, and that the proposal would prevent a prime minister, by statute, from being a member of the House of Lords. The Lord Chancellor, however, assured the House of Lords that the bill was not a "subtle device to prevent any possibility of a member of that house becoming prime minister."[43] No further debate of consequence occurred in the Lords; and the bill, which is now an essential part of the British constitutional structure, was enacted without amendment.

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Administrative Regions in Great Britain. In the administration of public affairs in Great Britain, several government departments have found it convenient to divide the country into varying numbers of regional districts, each covering a group of counties. These districts vary a good deal in number and in area for the different departments, though in some cases a similar area is used by more than one department. The largest area is Scotland, with an extensive organization of public administration under the Secretary of State for Scotland, and its own judicial system, while other departments also have branch headquarters for Scotland. Northern Ireland forms another important region, with a large degree of autonomy, under a separate parliament; while, as in the case of Scotland, several departments of the United Kingdom have branch headquarters in Belfast. Wales is also a distinct district for several departments.

The oldest district system in continuous existence is that of the Church of England, with its two provinces of Canterbury and York. Each of these is in turn divided into dioceses—29 in the province of Canterbury and 12 in the province of York. But the bishoprics are too numerous to serve as a basis for a general system.

The Church of Scotland also has a series of regional districts. The local kirk sessions are grouped into 66 presbyteries, and these into 12 provincial synods (each including from three to nine presbyteries). At the

[42] House of Lords, June 21. London *Times*, June 22, 1937.

[43] *Ibid.*

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head of the system is the General Assembly, composed of commissioners elected by the presbyteries.

Another series of regional areas of ancient origin is the system of judicial circuits for judges of the High Court. There are now eight of these circuits, in addition to the central law courts in London: Northern, North Eastern, Midland, North Wales and Chester, South Wales, Oxford, South Eastern, and Western. There are also 89 district registrars of the High Court, and 23 district probate registeries.

The Exchequer, the Board of Customs and Excise, and the Board of Inland Revenue have branch offices in Scotland and Northern Ireland, and collectors and other officials at district stations throughout the United Kingdom.

In the time of Cromwell, the whole country was divided into military districts, each under a major-general. At the present time, under the War Office, the army in Great Britain has eight regional headquarters: Aldershot, Eastern, London district, Northern (at York), Northern Ireland, Scottish, Southern, and Western. There are likewise numerous munitions factories and other institutions at various places in the kingdom; also troops in various colonies and dependencies, and at some foreign stations, as in China, Egypt, and Malaya.

The Air Force divides the country into seven areas: Air Defence, Central Area, Fighting Area, Inland Area, Western Area, Cranell (in Lincolnshire), and Holton (in Buckinghamshire). There are also colonial and foreign stations.

The Admiralty has a large number of armament depots and factories, dockyards, and other naval stations in Great Britain, but these are not organized into geographical districts. The department of electrical engineering has, however, four districts, with headquarters at Glasgow, Manchester, Newcastle, and London. The Navy is organized into fleets and squadrons in different parts of the world.

The Foreign Office, like the Navy, has agents in all parts of the world, and offers no basis for territorial areas in the United Kingdom. It has, however, a branch passport office at Liverpool.

The Ministry of Health also makes use of regional districts. District auditors, who audit the accounts of county councils and urban and rural district councils, were formerly 30 in number, with separate auditors for county accounts and for urban and rural district accounts. This has been changed so that there are now 19 chief auditors, each in charge of a district, with assistant auditors. There is no direct appeal from the decision of an auditor; but a chief inspector of auditors exercises some supervision in correlating the work of the auditors, and the minister has power to waive a surcharge in a particular case, while leaving the auditor's ruling in force for the future.

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In the insurance service, some 12,000 physicians are engaged in connection with those receiving sick benefits, on a panel system; and other physicians are engaged to review the cases of those on sick benefit, and incidentally to serve as a means of supervising the physicians dealing with sick persons. These reviewing physicians are grouped in 30 regional areas, each containing about 400 doctors on the insurance panel, with a regional officer in charge. These regional areas are in turn grouped into four larger divisions—Northeastern, Northwestern, Southwestern, and London and Southeastern, each in charge of a chief inspector with a staff of about 40. Like the smaller regional areas, these divisions are organized on the basis of conditions and the number of doctors, and vary widely in area. The Southwestern division extends from Birmingham to Cornwall.

The Board of Education divides England and Wales into geographical districts and divisions for the inspection of schools. There are some 315 local educational authorities in England and Wales, each in charge of the schools in what is technically called an "area." These vary widely in population from the county of London to some of the smaller boroughs. For inspection purposes, one or more of these areas form a district, to each of which are assigned, as a rule, three inspectors—one for elementary schools, one for secondary schools, and one for technical schools. The districts are grouped into nine divisions for England, each in charge of a divisional inspector, who is directly responsible to the senior chief inspector for coördinating the work of the district inspectors within the division. The divisions are as follows: (1) Northern: Northumberland, Cumberland, Westmoreland, Durham; (2) North Eastern: Yorkshire; (3) North Western: Lancaster, Cheshire; (4) West Central: Stafford, Warwick, Gloucester, Hereford, Salop, and Worcester; (5) East Central: Derby, Nottingham, Leicester, Rutland, Northampton, Buckingham, Oxford, and Lincoln; (6) Eastern: Norfolk, Suffolk, Cambridge, Soke of Peterborough, Huntington, Bedford, Hertford, and Essex; (7) Metropolitan: London and Middlesex; (8) South Eastern: Surrey, Berks, Hampshire, Isle of Wight, Sussex, and Kent; and (9) South Western: Cornwall, Devonshire, Somerset, Dorset, and Wilts. Wales and Monmouth are inspected by the Welsh department of the Board.

The Home Office factory inspection department has 10 superintendents, inspectors of divisions for territorial regions: Eastern, East Lancashire, Midland, North Midland, North Eastern, North Western, Southern, Western, Central Metropolitan, and Scotland.

The Ministry of Labour has 12 regional districts, as follows: North 1. Durham and Northumberland; North 2. Cumberland, Westmoreland, and Yorkshire (East and North Riding); North 3. Yorkshire (West Riding); North 4. Lancashire and Cheshire; Midlands 1. Gloucester, Hereford, Salop, Stopps, Warwick, and Worcester; Midlands 2. Derby,

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Lincoln, Northants, and Wilts; East. Cambridge, Hunts, Lines, Norfolk, Suffolk, and Rutland; South West. Cornwall, Devon, Dorset, Somerset, and Wilts; South East. The rest of England; Wales 1. Breeknock, Caemarthen, Glanvergan, and Monmouth; Wales 2. The rest of Wales; Scotland.

These show a wide variation in population, from 30 per cent of the total in the South Eastern region (including London) to 1.5 per cent in North Wales. North 4, Midland, and Scotland have each from 10 to 13 per cent. The others have from 2.8 per cent (North 2) to 7.68 per cent (North 3).

The finance department of the Ministry of Labour has seven local finance offices—at Birmingham, Bristol, Cardiff, Edinburgh, Leeds, London, and Manchester. The industrial relations branch has six out-stations—at Birmingham, Bristol, Glasgow, Leeds, London, and Manchester. The trade boards branch has six out-stations—at Birmingham, Bristol, Edinburgh, Leeds, Lincoln, and Manchester.

The Unemployment Assistance Board has five regional officers, and 25 district officers in charge of out-stations.

The Ministry of Transport has six divisional areas—Eastern, London, Midland, Northern, Southern, Wales, and Monmouth. There are also 11 regional areas for traffic commissioners—Eastern, East Midland, West Midland, South Eastern, South Wales, Metropolitan, Western, and two areas in Scotland (Northern and Southern). There is also an advisory committee for London and the Home Counties.

The Electricity Commissioners and Central Electricity Board have organized nine regional schemes for electricity supply, covering the whole of Great Britain except the north of Scotland. There are also eight electricity districts, covering parts of Great Britain. Four of these have joint electricity authorities—London and the Home Counties, North-west Midland, West Midland, and North Wales and South Cheshire. Four have an advisory board or committee—East Midland, Mid-Lancashire, South-west Midland, Edinburgh and Lothian.

Connected with the Ministry of Agriculture, there are agricultural wages boards for each county, local fishery committees, fishery boards, and catchment and drainage boards.

The Post Office has had a system of 13 postal districts, in charge of surveyors, nine postmaster surveyors for large towns and neighboring territory, and for the London area, and an overlapping set of 55 engineer districts for the telegraph and telephone service. This is being replaced by a system to provide nine regional areas and London, within which there will be about 500 local postal areas and the 55 engineer districts. The Scotland and North Eastern Districts have been established.

The Ministry of Pensions has 11 regional areas—London, East Mid-

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land, Exeter and district, Leeds and district, Liverpool and district, Northern (Newcastle), South East Lancashire and East Cheshire, South Wales, West Midlands, North and East Scotland, and Southwest, and West Scotland.

The Board of Trade has nine surveyor districts for the mercantile marine department—East of Scotland, North-east England, East of England, London district, South and Southwest England, Bristol Channel district, Liverpool district, West of Scotland, and Northern Ireland.

The Forestry Commission has seven divisional offices, at London, Cambridge, Bristol, Durham, Glasgow, Aberdeen, and Inverness.

The Stationery Office has four provincial branches, at Belfast, Cardiff, Edinburgh, and Manchester (for the Northern area).

The British universities are located in different geographical sections; and while Oxford, Cambridge, and London have students from all parts of the country, as well as from the colonies, dominions, and foreign countries, the students at other institutions come largely from the neighboring counties, though there are no defined areas. The universities in England are at Oxford, Cambridge, London, Durham (and Newcastle), Manchester, Birmingham, Liverpool, Leeds, Sheffield, Bristol, and Reading. The University of Wales has five colleges, in five different places. The four Scottish universities are at St. Andrews, Glasgow, Aberdeen, and Edinburgh. The University of Northern Ireland is at Belfast. There are four universities in the Irish Free State—two at Dublin (Trinity and the National University), one at Cork, and one at Galway.

The British Broadcasting Corporation has a series of regional areas—for the London district, Midlands, Northern, Western, Scotland and Northern Ireland, and other stations at Aberdeen, Athlone, Bournemouth, Plymouth, and Newcastle.

The number of such regional districts varies from four to twelve. The most clearly defined areas are Scotland, Northern Ireland, and Wales, though Scotland and Wales are sometimes divided. Other descriptive terms used by several departments are: Northern, Midlands, Eastern, the London metropolitan area, South Eastern, Southern, and Western. But the areas covered by these terms is not always the same; and in some cases there are subdivisions, such as North Eastern and North Western, East and West Midlands, and Southwestern.

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The Status of Foreign Concessions and Settlements in the Treaty Ports of China. Hostilities now in progress in the Far East may produce significant changes in the status of foreign concessions and settlements in China. It may be useful, therefore, to classify these areas and to survey their status prior to the present "undeclared war." Among the several privileges gained by Great Britain, the United States, and France in their treaties with China in 1842–44 was the right of foreign residence in the five ports opened to trade by these treaties: Amoy, Canton, Foochow, Ningpo, and Shanghai. Arrangements for the residence of foreigners and their families in these ports were to be made by the consular officials and the local Chinese authorities acting "in concert together." These arrangements resulted in the delimitation of areas for foreign residence, generally called "settlements," which grew into municipalities exempt from Chinese jurisdiction and completely under foreign control. As more ports were opened for trade by the various treaties negotiated after 1844, certain nations requested exclusive areas in many of them. Such areas were generally called "concessions."

The terms "settlement" and "concession" have often been used indiscriminately, but the word "settlement" has most often been applied to a foreign-controlled area in which all the Treaty Powers have equal rights.[1] Such an area is governed by a locally elected municipal council of foreigners. In existing settlements, a minority of Chinese members has been added in recent years. Both Chinese and foreigners may reside in a foreign settlement. Its chief characteristic is the fact that land can be leased by foreigners directly from the Chinese owner, the deeds being registered through the consulate of the foreigner and with the local Chinese authorities.

The term "concession," on the other hand, has been applied to a grant of land by the Chinese government to a single foreign nation, either directly by treaty or indirectly under general treaty terms by the local Chinese authorities. A concession is governed by the consular representative of the nation controlling the grant, sometimes with the assistance of an elected municipal council. The chief characteristic of a national concession is that the grant is in the form of a long-term or perpetual

[1] The "treaty powers" are those nations possessing special rights and privileges in China by treaty. There are at present 15: Great Britain, the United States, Japan, France, Italy, Norway, Sweden, Denmark, the Netherlands, Spain, Portugal, Peru, Mexico, and Switzerland. Germany and Austria-Hungary lost their treaty rights after the World War, and Russia gave up her rights as a matter of political expediency. Belgium was declared by China to have lost her rights in 1927. See W. W. Willoughby, *Foreign Rights and Interests in China* (Baltimore, 1927), Vol. II, p. 586.

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lease on which the nation concerned pays a nominal ground rent to the Chinese government. The nation controlling the concession, in turn, acts as landlord by sub-leasing plots to individuals, either foreign or Chinese.[2]

Classification of Settlements. There exist at present two general foreign settlements as defined—the International Settlement at Shanghai and the International Settlement at Kulangsu (Amoy). The Shanghai International Settlement was the result of amalgamation of areas set aside for British and American residence in 1845 and 1863 respectively. Its international character is due largely to an early insistence by Americans in Shanghai that the treaties of 1842–44 did not provide for the establishment of exclusive national concessions. The International Settlement at the port of Amoy covers the whole of the island of Kulangsu. An informal organization was established by foreigners resident there soon after the port was opened, but the settlement was not formally organized until the approval of its Land Regulations by the Chinese government in May, 1902.[3]

In addition to the settlements at Shanghai and Amoy, informal foreign settlements developed in Chefoo, Foochow, and Ningpo. At these ports, foreigners congregated in an area and set up a quasi-municipal organization, assessing themselves for the upkeep of roads, sanitation, etc., with the tacit but not explicit consent of the Chinese government. Chefoo is the only port at which such a settlement exists at present.

As the foreign powers demanded that more and more ports be opened to trade, the Chinese government adopted the expedient of expropriating land in some of these ports which it set aside for foreign residence. This was done in Yochow, Wuhu, Soochow, Hangchow, Foochow, Nanning, and Nanking. But in all of these so-called "settlements" the Chinese government retained full jurisdiction as to taxation, policing, etc. Gradually these settlements were absorbed into the Chinese city, and they cannot now be distinguished as separate areas.

Classification of National Concessions. There is definite record of grants by the Chinese government of 23 concessions to eight nations in 10 Chinese ports.[4] At present, only four nations possess concessions, as follows: Great Britain—two, at Canton and Tientsin; Japan—three, at Hangchow, Hankow, and Tientsin; France—four, at Canton, Hankow, Shanghai, and Tientsin; Italy—one, at Tientsin. Thirteen concessions,

[2] In some concessions, Chinese are excluded from renting land, but circumvent this by renting in the name of a foreigner, paying him for the privilege. In the area known as the British Extra-Mural Extension in Tientsin, and in the extensions of 1898 and 1914 to the French concession in Shanghai, land leasing is on the same basis as in a general foreign settlement.

[3] G. E. B. Hertslet, *China Treaties*, Vol. II, p. 774.

[4] See table appended.

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therefore, have reverted to China. Great Britain has given up four. The British concession at Amoy was formally organized in 1877,[5] but with the development of the International Settlement on the island of Kulangsu, where the British had equal rights with other treaty powers, a separate concession became unnecessary, and with the exchange of British registered title deeds for Chinese title deeds in 1930, the last vestige of the concession disappeared. As a result of the establishment of the Chinese Nationalist government in 1927, Great Britain returned to China her concessions at the ports of Hankow, Chinkiang, and Kiukiang.[6]

By treaties with China in 1896, Japan gained rights to exclusive concessions in a number of ports. In addition to the four concessions still retained by Japan, concessions were established at Amoy, Chungking, and Shashih. Only the one at the latter port was formally organized. Trade was insufficient to warrant the development of municipalities in these areas, and so far as is known the Japanese concessions at these ports have disappeared as such and the areas are under control of the local Chinese authorities.

Germany and Austria-Hungary lost all special privileges in China as a result of the World War, and consequently the Chinese government took over the German concession at Hankow and the German and Austro-Hungarian concessions at Tientsin. In 1920, the Chinese also took over administrative control of the Russian concessions in Hankow and Tientsin. This was later confirmed when Soviet Russia gave up the special privileges in China acquired by the Tsarist government. In 1930, the Belgian concession in Tientsin was returned to China by special agreement.[7]

In addition to the 23 concessions formally established as noted above, Great Britain, Japan, and the United States were granted rights to concessions which either were not established or have a doubtful status at the present time. At the port of Wuhu on the Yangtze, an area was delimited for a British concession in 1877 but was never organized. By a protocol with China in 1896, Japan was granted the right to exclusive conces-

[5] Hertslet, Vol. II, p. 1125.

[6] Rendition of British concessions at Hankow and Kiukiang, by Chen O'Malley agreement, March 15, 1927. Text in *China Year Book*, 1928, pp. 739 and 741 ff.; and in Great Britain, Foreign Office, *Papers Relating to British Concessions in Hankow and Kiukiang*, China No. 3 (1927). Rendition of British concession at Chinkiang by exchange of notes, October 31, 1929. Texts in *China Year Book*, 1929–30, pp. 105–109, and in League of Nations, Treaty Series, No. 2289, Vol. XCIX, p. 441.

[7] Rendition of Belgian concession in Tientsin by agreement of August 31, 1929. Text in *China Year Book*, 1929–30, pp. 916 ff., and in League of Nations, Treaty Series, No. 2810, Vol. CXII, p. 105.

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sions in the ports of Amoy, Chungking, Hangchow, Hankow, Shanghai, Shashih, Soochow, and Tientsin.[8] This right has not been exercised in Soochow and Shanghai. Both Great Britain and Japan, as well as Russia, made tentative arrangements for the establishment of concessions at the port of Newchwang in Manchuria after 1861. Although a Russian area was partially organized about the time of the Boxer rebellion, no other concessions were formally established there. Newchwang is now a part of Manchoukuo.

It has frequently been stated that the United States has never held concessions in China. While such a statement may be legally correct, it does not represent the whole truth. In Shanghai, the local Chinese officials offered to set aside an area for the use of Americans soon after the port was opened. This was refused by the American consul, who thought the site disadvantageous. In 1863, toward the end of the Taiping rebellion, an unofficial American settlement had developed outside the then foreign settlement in the area known as Hongkew. On July 4, 1863, the American consul, George M. Seward, concluded an agreement with the local Chinese officials for delimitation of an American "settlement" or, by my definition, actually a concession.[9] This action, so far as is known, was never approved by the United States government, then involved in the Civil War, and before the year ended the area was amalgamated with the former British area to form an enlarged international settlement. The United States, however, possesses equal rights with the other treaty powers in the International Settlement at Shanghai, and likewise has equal responsibility.

At the port of Amoy, there existed an area adjacent to the British concession which was known locally as the "American Settlement" until about 1900. This area was never officially recognized as a concession, and in 1903 the United States approved the Land Regulations for the International Settlement at Kulangsu, thus placing itself on a basis of equality with the other treaty powers and assuming an equal responsibility for this settlement.

At Tientsin, an area was set aside for American residence by the local Chinese officials in 1869. This area came to be known locally as the American concession, and was so referred to in diplomatic correspondence.[10] Apparently the United States consular authorities in Tientsin exercised jurisdiction over this land until 1880. In 1896, all claim to control or jurisdiction was formally abandoned by the United States govern-

[8] Protocol concerning Japanese settlements, inland navigation, etc. Oct. 19, 1896. Hertslet, Vol. I, p. 91. 1896/6, Arts. 1, 3.

[9] *Foreign Relations of the United States*, 1867, Part I, China, Inclosure in No. 125.

[10] *Ibid.*, 1901, Vol. I, pp. 40 ff. See inclosure No. 2 in No. 551, p. 50.

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ment.[11] Although in 1900 Mr. Conger, the American minister to China, urged that the government reassert its rights, such action was not taken and the area was included in the extension of the British concession in 1901–02. In the British extension, Americans and other foreigners possessing treaty privileges were allowed (by the British) to rent land through registration of their deeds with their own consulates.

The legal bases for the existence of these areas varies with the circumstances of their establishment. The International Settlement and the French concession at Shanghai were developed under the terms of the treaties of 1842–44, which made no specific provisions for foreign municipalities on Chinese soil. Approval of local regulations and of extensions of these two areas was in all cases obtained from the local Chinese authorities with the tacit, but not explicit, consent of the Central Chinese government. Their legal position, therefore, is that of a customary servitude of long standing maintained by force, and recognized as such by the Chinese government. The remaining settlements and concessions have a more definitive treaty basis than those at Shanghai, and their development has been regularized by agreements with the Chinese government respecting their establishment and extensions of their boundaries.

Perhaps the most important question concerning the status of these settlements and concessions is whether a change in the status of one area can be made without affecting the status of other areas or without affecting the exercise of extraterritoriality. Historically, 13 concessions have reverted to China, while the remaining areas are intact; and extraterritoriality was not impaired by this process. Theoretically, the process could continue without any change in the exercise of extraterritoriality, but it must be pointed out that the areas given up were in minor ports or were held by minor powers, as in the case of the Belgian concession in Tientsin. It is extremely doubtful whether Great Britain, France, and Japan would agree to the rendition of their respective concessions in Tientsin unless they were also prepared to negotiate on the question of extraterritoriality. It is equally doubtful whether Great Britain, France, Japan, and the United States would agree to rendition of the Shanghai International Settlement, or even the one at Amoy, except as part of a general settlement of the question of foreign rights and privileges in China.

The second question to be considered with respect to the status of existing foreign settlements and concessions is their relation to the political and economic development of China. It is a recognized fact that the security of these areas, particularly in Tientsin and Shanghai, has been an important factor in the flow of Chinese capital from the interior to these treaty ports. This has resulted in intense speculation, particularly

[11] Instructions to this effect quoted in sub-inclosure No. 3 in No. 551, *op. cit.*

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in Shanghai, and has undoubtedly hindered rural rehabilitation in the interior. The implications of this process need to be thoroughly studied before definite conclusions can be drawn.

On the other hand, these settlements and concessions, rendered secure on occasion by the armed forces of the foreign powers, have provided safe bases for the economic, political, and even military, penetration of China by the foreign powers. The Shanghai International Settlement and the Tientsin concessions contain headquarters for most of the foreign banks and business houses operating in China. A large proportion of foreign and Chinese industries are also located in these foreign-controlled areas, where they are generally free from Chinese jurisdiction and taxation, and where their property is under the protection of foreign guns. In Tientsin, the Japanese Concession was the initial base for Japan's military operations in North China. In Shanghai, the Hongkew district of the International Settlement, known locally as "little Tokyo," was used as a military base by the Japanese in 1932 and, now under their complete control, serves as their base of operations in the Yangtze valley. Japanese withdrawal from their Hankow concession was dictated by military strategy and does not mean that the Japanese will forego their rights in that port.

The full implications of the relation between existing settlements and concessions in the treaty ports and the economic, political, or military penetration of China by the foreign powers needs detailed study. It will suffice here to point out that the question of the future status of settlements and concessions is more than a problem of treaty agreements and legal technicalities; it is one fundamentally connected with all aspects of Sino-foreign relations.[1]

WILLIAM C. JOHNSTONE.

George Washington University.

[1] The following table indicates the location of settlements and concessions, the dates of the original grants or agreements for their establishment, and dates of extensions and of rendition where that has taken place.

International Settlements:

Shanghai: British settlement delimited, 1845; made international, 1854; extensions, 1863 and 1899.

Kulangsu (Amoy): Developed as a general foreign settlement after 1843; right to national concessions granted Great Britain and Japan, 1860; international settlement established formally, 1903.

National Concessions:

Great Britain:

Canton—formally granted, 1859.

Tientsin—granted, 1860; extension, 1897; additional grant, 1900–02; grants consolidated, 1918.

(Continued on the following page)

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Hankow—granted, 1861; extended, 1896; returned to China, 1927.
Kiukiang—granted, 1861; returned to China, 1927.
Chinkiang—granted, 1861; returned to China, 1929.
Amoy—right to concession, 1861; right given up, 1930.

France:
Shanghai—granted, 1849; extended, 1861, 1898, 1915.
Tientsin—granted, 1861; extended, 1902.
Hankow—granted, 1861; right not exercised; regranted, 1896.
Canton—granted, 1859.

Japan:
Tientsin—granted, 1896; extended, 1900–02; additional property leased in 1934–36; status of this property in doubt in relation to concession.
Hankow—granted, 1896.
Amoy—right granted, 1896. (See International Settlements above.)
Shanghai—right to request concession granted, 1896; not exercised to date.
Hangchow—granted, 1896—reported renewed for 30 years, 1935.
Shashih—granted, 1896; present status in doubt.
Yochow—granted, 1898; present status in doubt.
Samsha—granted, 1898; never taken up.
Foochow—granted, 1898; never taken up.
Chunking—granted, 1896; present status in doubt.
Soochow—granted, 1896; present status in doubt.

Belgium:
Tientsin—granted, 1902; returned to China, 1931.

Italy:
Tientsin—granted, 1901.

Germany:
Tientsin—granted, 1895; extended, 1901; taken over by China, 1919–20.
Hankow—granted, 1895; taken over by China, 1919–20.

Austria-Hungary:
Tientsin—granted, 1902; taken over by China, 1919–20.

Russia:
Tientsin—granted, 1900; taken over by China, 1920.
Hankow—granted, 1896; confirmed by China, 1900; taken over by China, 1920.

United States:
Shanghai—American settlement delimited, 1863; not recognized by United States government; amalgamated with former British settlement to form part of International Settlement, 1863.
Tientsin—Area delimited for American residence, 1869; quasi-U.S. jurisdiction over land until 1880; all jurisdiction abandoned, 1896; area included in British extension, 1901–02.
Amoy—Area known as American Settlement until 1900; never formally recognized.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The list of round-tables, with leaders, at the December meeting of the American Political Science Association was announced in the August issue of the REVIEW. The committee on program, Professor Francis W. Coker, chairman, announces further (1) that three luncheon meetings will be addressed by Charles A. Beard, on "The Latest Judicial Conflict," Philip C. Staples, of the Bell Telephone Company of Pennsylvania, on "A Business Man's View of the Constitution," and Robert H. Jackson, assistant attorney-general of the United States, on a subject to be announced; (2) that among persons who will give addresses at general sessions are Professors Robert E. Cushman, Edward S. Corwin, and William Y. Elliott; and (3) that Professor Thomas Reed Powell's presidential address will be delivered on Monday evening, December 27, instead of the evening following.

Professor William Anderson is on leave from the University of Minnesota during the fall quarter and Professor Harold S. Quigley is serving as chairman of the political science department.

After a year spent in studying colonial problems in England, Ceylon, the Federated Malay States, Java, the Philippines, and Hongkong, Dr. Lennox A. Mills has returned to the University of Minnesota, where he has been advanced to an associate professorship.

Professor L. E. Aylsworth, of the University of Nebraska, is on leave during the first semester of the current year.

Professor Charles S. Hyneman has resigned his position at the University of Illinois to accept a professorship in the department of political science at Louisiana State University. In addition to serving as head of the department, he will be in charge of the bureau of governmental research.

Professor Russell M. Story, of Pomona College, has been made president of the Claremont Colleges and will be concerned especially with developing the program of the associated colleges and administering the various services of the central institution, especially the graduate school.

Professor R. A. MacKay, of Dalhousie University, has been named by Prime Minister King as one of five Canadian scholars and publicists who will serve as a royal commission to investigate the economic and financial basis of Canadian confederation in the light of social and economic developments in the past seventy years.

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Professor Edwin A. Cottrell, of Stanford University, is on leave during the autumn quarter and is visiting institutions and carrying on research in the East.

Professor Charles Fairman, Brandeis fellow at Harvard University, will teach public law at Stanford University during the winter and spring quarters.

Professor James K. Pollock, of the University of Michigan, will serve as acting professor of political science at Stanford University during the summer quarter of 1938.

Professor Harold D. Lasswell is on leave from the University of Chicago during the summer and autumn quarters in order to carry on studies in China.

Mr. Herbert Emmerich, former deputy governor of the Farm Credit Administration, has been appointed associate director of the Public Administration Clearing House. He also has been appointed lecturer in political science at the University of Chicago.

Professor Floyd W. Reeves, who participated in the preparation of material for the President's Committee on Administrative Management, and who is now chairman and director of studies of the President's Advisory Committee on Education, will offer a course on general principles of administration upon his return to the University of Chicago in the winter quarter.

The Committee on Public Administration of the Social Science Research Council is sponsoring a study of the city manager plan, to be conducted by Mr. Harold Stone and Mr. Donald Price.

Professor Amry Vandenbosch, on leave from the University of Kentucky, is spending a half-year in Europe studying Dutch colonial policy.

Dr. Carl J. Friedrich, appointed lecturer in government at Harvard University in 1926, has been advanced from an associate to a full professorship.

Dr. H. V. Thornton, formerly assistant professor of government at New York University, now holds an associate professorship at the University of Oklahoma.

Professor John W. Manning, director of the bureau of governmental research at the University of Kentucky, has been appointed chairman of a committee on public-service institutes, which will function as an investigating group for social service work.

Dr. Lewis Meriam, of the Brookings Institution, offered courses in the School of Social Service Administration at the University of Chicago during the second term of the summer quarter.

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After a year spent in teaching and research at Harvard University, Professor Charles G. Haines has returned to his post at the University of California at Los Angeles.

Assistant Professor V. O. Key, Jr., has resigned his position at the University of California at Los Angeles to accept an appointment with the National Resources Committee at Washington, D. C. For the past year and a half, Dr. Key has been on the staff of the Committee on Public Administration of the Social Science Research Council at Washington.

At the University of Missouri, Dr. Martin L. Faust has been promoted to a full professorship.

During the past summer, Professor E. O. Stene, of the University of Kansas, acted as consultant to the research department of the Kansas Legislative Council on state administrative reorganization.

Professor Finla G. Crawford, of Syracuse University, spent the past summer in Washington as a consultant with the President's Advisory Committee on Education.

Professor William E. Mosher, of Syracuse University, participated in the program of the Institute of Government held under the auspices of the University of Southern California last June.

New instructors in political science at Dartmouth College this year include Dr. Robert K. Carr and Dr. Edmund W. Fenn, formerly of the University of Oklahoma and University of New Hampshire, respectively.

Dr. Julian S. Duncan, associate professor of political science at St. John's College, has joined the faculty of Babson Institute. He will teach courses in government and in government control of industry.

Dr. Alexander Daspit, assistant professor of government at Louisiana State University, is studying at Harvard during the current academic year. During his absence, his courses are in charge of Dr. Willmoore Kendall.

Dr. Raymond McKelvey, of Santa Barbara State College, has been added to the political science staff of Pomona College in a temporary capacity.

Mr. Glenn McClelland, who has been doing graduate work at Columbia University and teaching at Bard College, has accepted an instructorship at the University of Wisconsin.

Dr. Hyman E. Cohen has been reappointed research associate and instructor in the department of political science at the University of

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Chicago for the current academic year. His *Recent Theories of Sovereignty* has lately been published by the University of Chicago Press.

Dr. Winston W. Crouch has been appointed to an instructorship at the University of California at Los Angeles.

Mr. Webb Noyes, who for some time has been attached to the staff of the library at the University of Michigan, has been appointed librarian of the School of Citizenship and Public Affairs at Syracuse University.

Mr. Howard M. Kline, formerly an instructor in the School of Citizenship and Public Affairs at Syracuse University, has been appointed to a similar position at the University of Michigan.

Messrs. Fordyce Luikart and Barrett Hollister, of Syracuse University, have accepted instructorships at the State Normal School at Brockport, New York, and Antioch College, respectively.

Dr. Paul M. A. Linebarger, formerly connected with Harvard University, is now instructor in political science at Duke University.

Mr. Hugh A. Bone, who received his doctor's degree at Northwestern University during the summer, has been appointed instructor at the University of Maryland.

A building to house the School of Citizenship and Public Affairs at Syracuse University will be dedicated in November.

Professor J. Alton Burdine, of the University of Texas, has been appointed to the sub-committee on personnel standards of the national Interstate Conference of Unemployment Compensation Administrators. It is the function of this sub-committee "to prepare a proposed plan of personnel procedure for state agencies along the lines of modern methods, including procedure for selection of personnel on a non-partisan merit basis." The plan will be discussed and considered for adoption at the next meeting of the Interstate Conference.

Under the sponsorship of the bureau of governmental research, the second annual Institute of Government was held at the University of Washington on July 26–28. Over one thousand public officials and lay people interested in government attended the various section meetings, which included training work in the fields of planning, public welfare, personnel administration, health, recreation, law enforcement, property assessment, taxation, financial administration, and the philosophy of government. Dr. Emery E. Olson, dean of the School of Government of the University of Southern California and lately visiting professor of public administration at the American University, Washington, D. C., again directed the Institute.

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Constitutional Government and Politics. By Carl Joachim Friedrich. (New York: Harper and Brothers. 1937. Pp. xvi, 591.)

The following note on Dr. Friedrich's important volume should be considered merely as a sort of critical summary of its contents and not as a review, because an adequate appreciation of its merits or defects can be obtained only when its materials and methods have been utilized and tested over a longer period in teaching and research. But even now it seems safe to state that whenever information is sought on not a few subjects in the realm of comparative government, reference to and consideration of Dr. Friedrich's contributions will hereafter be indispensable. The book is a fortunate blend of the German method of scientific penetration on the one hand and Anglo-Saxon descriptive analysis on the other, equally remote from doctrinaire abstractions and from quasi-sociological generalizations, sound and at the same time faithful to scholarly principles, well documented and well written, not always original or profound, but never dull.

Evidently Dr. Friedrich was not actuated by ambition to write what in Continental political science is understood by the term *Allegemeine Staatslehre* or *Théorie générale de l'état* (in the sense of Jellinek, Duguit, or Carré de Malberg), and of which Garner's and Willoughby's treatises are outstanding examples in this country. Nor is the book a systematic *traité* such as has been presented by Joseph-Barthélemy or Hauriou. On the contrary, it is a genuine contribution to comparative government of the customary Anglo-Saxon type and as such to be compared perhaps best to Dr. Finer's monumental *Theory and Practice of Modern Governments.* Like Finer, Dr. Friedrich chooses the "topical" or "functional" method in place of the "country-by-country" approach. Space forbids noting parallels and deviations in emphasis or selection of material by the two authors. While both agree on the importance of the civil service or bureaucracy for modern governments—Dr. Friedrich describes it as "the core" of the modern state—the latter has filled the main gap in Dr. Finer's work, namely, the decisive importance of the courts for the dynamics of government. The integration of the judicial function into the general frame of constitutional government is, both materially and methodically, one of the conspicuous merits of the book. In addition, Dr. Finer's volumes omit any specific treatment of authoritarian governments, while Dr. Friedrich is fully aware of the fact that constitutional government, operated on the basis of rational processes of responsibility, legality, and control, can be fully expounded only against the background of the opposite evidence of dictatorships. From the didactical viewpoint, it is a matter of personal taste, or of convenience

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of the individual teacher, whether he give preference to Finer's arrangement of topics, which, so to speak, is more anatomical, while Dr. Friedrich's method is more synoptical. In practice, the two contributions will be found mutually supplementary.

In Part I, Dr. Friedrich opens his discussion with a forceful statement of "power as the focal point of modern political science." The reviewer may be permitted to remark here that, in his opinion, this thesis seems to over-rate the undoubtedly undeniable influence of authoritarian trends which, unfortunately, for the time being obfuscate the real issues behind the techniques of power, that is, the compelling forces of absolute values for which ultimately power techniques serve. The author himself, in contrasting constitutional government with the opportunistic methods of dictatorships, seems to gravitate towards similar absolute concepts, as shown in the ensuing chapters of Part I.

After an excellent survey of bureaucracy (Chapters II and III), the author discusses (in Chapters IV to VII) what he calls "objectives and techniques." Here he includes such heterogeneous topics as territorial expansion and trade, "reduction of external friction" (foreign relations and diplomacy), and "reduction of internal friction" (such as police, legislation, and judicial restraint and control). Some items of what in Continental general treatises on the state is embraced by the terms "aims and functions of the state" are discussed in this connection, such as security and prosperity, police, and administration proper. Particularly welcome, and, incidentally, very illustrative of the author's sociological method, is a study of the "military establishment," which, in similar treatises, is usually neglected.

In Part II, "Constitutionalizing Modern Government," the sequence of topics is more logical and convincing. It starts with a discussion of the making and amending of constitutions (Chapters VIII and IX). Room is found here for a well balanced treatment of revolutions, the crucial problem for the methodology of constitutional government, and also for the rôle of the plebiscite which evidently is as much a favorite topic of the author as of the reviewer. In the next chapter (X, "The Constitution as a Political Force"), which, in the reviewer's opinion, should be the center of gravity of any treatise on constitutional government, too scant importance is attributed to the problem of the bill of rights as the embodiment of its absolute values within the technical framework of the constitutional state. In fact, the notion of liberty is the very life-nerve of constitutional government if it is considered as the expression of metaphysical values and not merely as a set of accidental legal rules. A similar objection may be raised against the scholarly discussion of the separation of powers (in Chapter XI). Events of our own times demonstrate beyond doubt that the technical aspects of the doctrine are much

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less important than its ethical implications for the relations between power and liberty. The next chapter (XII) deals very adequately with judicial review; while the chapter on federalism (XIII) appears perhaps somewhat perfunctory.

Of the highest interest is the following chapter on constitutional dictatorship (XIV). Here the author, prompted by contemporary experience and justly provoked by Herr Carl Schmitt's fallacious cleverness, has presented one of the most persuasive sections of his book, although, as will be shown at the end of this review, one of the main deficiencies of the whole treatise is here involved. In the concluding chapter of this part (XV, on responsibility)—which, in the reviewer's opinion, should have been placed in connection with the discussion of bureaucracy—another crucial problem of the modern state is approached, although it consists less in the control of the servants of the state than in the political control of the governments as correlative to political responsibility.

The third and by far the most voluminous part of the book contains, under the heading of "The Politics of Constitutional Systems," the mechanism of the representative technique in constitutional states, in particular electoral techniques (XVII), political parties (XVIII and XIX), the cabinet system (XX), the various aspects of parliamentary practices and procedure. It is specifically meritorious that the importance of the much misused and equally assailed deliberative function of representative bodies has been restated here; while, on the other hand, the author has well succeeded in conveying to the American reader a better understanding of the contributions of the German post-war school of Smend, Leibholz, and Wolff to the problems of integration, representation, and delegation. An excellent appendix on the press, as the "fourth estate," follows (Chapter XXIII). The next chapter (XXIV) contains a rather brief and stereotyped survey of pressure groups and representation of interests. It seems that a more profound treatment of the corporate state, based on the elaborate corporative jurisprudence of Italy, is badly needed. Even Finer's book on Mussolini (see review in this REVIEW, Vol. 30, p. 380) makes it evident that in this particular field much spade-work by unbiased foreign political scientists remains to be done. The book ends with a discussion of direct popular action (XXV), without, however, exhausting this most fascinating and important problem of organized mass democracy where the constitutional state has so much to gain from close observation of the techniques of dictatorial states.

Although in a volume of such vast extent and of such wealth of original remarks on controversial subjects many statements remain arguable, it does not seem appropriate to stress points of disagreement here. Yet two major objections cannot be suppressed. Dr. Friedrich's book, be-

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cause or in spite of the mastery displayed by the author in expounding his material and conclusions, is neither a text-book of the customary type, designed, in the first place, for the student, nor a really systematized and comprehensive general treatise on the state. The student, in view of the synoptical method applied by the learned author, must possess already a very extensive knowledge of facts which frequently are rather more presupposed than actually presented, and at least one other text-book using the "country-by-country" method will be needed by the ordinary college student if he intends to benefit as he should from the mine of information contained in Dr. Friedrich's volume. For graduate students, the book is manifestly what was, for a long time, a *desideratum*. For this reason, unless one takes a very optimistic view as to the future intellectual development of the average college student, the book is probably more useful for the teacher of comparative government, and to a certain extent also for research. Perhaps this was intrinsically the aim of the author himself.

Another objection is more basic. In many respects, constitutional government corresponds no longer to what the author describes it to be. Everywhere constitutional government is in transition from parliamentary determination of political issues to the undisputed predominance of the executive, operating, even in the most thoroughly democratic countries, under discretionary powers which, very euphemistically, may be spoken of as "quasi-constitutional." Indicative of this trend—observable in every constitutional state without exception—are the events in the smaller democracies which more and more have become "disciplined," or even "authoritarian." It is regrettable that this book contains so little material on the new governmental techniques in Belgium, Switzerland, and particularly Czechoslovakia, although a vast literature is obtainable (e.g., Tingsten's book on the *pleins pouvoirs*). It seems to the reviewer that Dr. Friedrich has described more the pattern of *pre-crisis* constitutional government, while constitutional government of the liberal type, even in France, not to speak of Great Britain, belongs evidently to the past. The reviewer has found nothing of the momentous development of the new boards in England which so clearly indicate the turn to "syndical" techniques in government. The proper place for this discussion would have been the chapter on constitutional dictatorship, which, at least for the time being, characterizes constitutional government as such. In the future, the real issue of constitutional government will probably be the relationship between the discretionary powers of the appointed government and the rationalized control of the government by the governed. All democratic countries are at present in search of a workable formula which will guarantee the responsibility and the control of democratic leaders to and by the masses. It remains to be seen whether

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the traditional concepts of legality and constitutionality can be reconciled with the realistic necessities of national leadership.

A vast bibliography, conveniently grouped at the end, satisfies many wishes of the advanced student and gives valuable hints even for those interested in further research. Needless to say, Dr. Friedrich's European background enables him to use much literature which is usually not referred to in books in this country. The reviewer notes, however, with some regret that the important doctrines of, for example, Carré de Malberg and his school and also other relevant French authors, are not mentioned.

As a whole, Dr. Friedrich's book is one of the most remarkable contributions in the field of comparative government in these last years; and, in the process of "continentalization" of political science in this country, it is indeed a landmark—an achievement for which the author may accept the sincere thanks of his colleagues, his students, and the politically interested public at large.

KARL LOEWENSTEIN.

Amherst College.

Essays in Political Science (in honor of W. W. Willoughby). EDITED BY JOHN MATHEWS AND JAMES HART. (Baltimore: The Johns Hopkins Press. 1937. Pp. viii, 364.)

This volume is a series of essays, written as a tribute to Professor Westel Woodbury Willoughby, who recently became professor emeritus after a long and distinguished service at Johns Hopkins University. The main body of the volume was contributed by his former students. One essay was written by his brother, W. F. Willoughby, and one by a former colleague, Professor W. W. Cook. In the opening chapter, Professor J. W. Garner gives an evaluation of the contributions of Professor Willoughby to political science. A bibliography of the chief writings of Professor Willoughby is appended. This shows not only the extent of his contributions to the literature of political science, but also the astonishing versatility of his interests in political theory, public law, American government and administration, and international relations.

To the student of today who is familiar with the wide range of courses in political science that are offered in American universities, and with the vast amount of literature that appears each year in that field, it may be somewhat surprising to realize that this development has taken place within the active life period of men still living. When Professor Willoughby began his teaching at Johns Hopkins, departments of political science offering opportunities for graduate study existed only at Columbia and Chicago. In a few other institutions, scattered courses in political science were given, usually under the auspices of other depart-

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ments. The writings of Francis Lieber, Theodore Woolsey, John W. Burgess, and Woodrow Wilson were practically the only contributions to the literature of political science that had been made by men in academic life in this country. To the development of this field Professor Willoughby devoted his life. He was largely instrumental in divorcing political science from its dependency and establishing it as a recognized and important field of investigation and study. He was one of the founders of the American Political Science Association, writing its constitution and serving as its first secretary-treasurer and later as its president. He was active in launching the AMERICAN POLITICAL SCIENCE REVIEW and served as its managing editor for the first ten years of its existence. Professor Garner pays a deserved tribute to his work as teacher and author and to his services in public affairs.

The other essays in the volume cover a wide range of topics. In the field of public administration, W. F. Willoughby writes on "The Science of Public Administration" and A. C. Millspaugh on "Democracy and Administrative Organization." In political theory, H. W. Stoke deals with "The Paradox of Representative Government," E. P. Herring with "Political Parties and the Public Interest," and J. Mattern with "From Geopolitik to Political Relativism." Two essays are concerned with the scientific method in politics and law, one by M. E. Dimock on "Scientific Method and the Future of Political Science," one by W. W. Cook on "A Scientific Approach to Law." In constitutional and administrative law, Leon Sachs discusses the case of Blackstone v. Miller as a study in multiple taxation, and A. Langeluttig writes on bankruptcy. In international law, C. G. Fenwick discusses "Political Disputes in International Law"; C. W. Young, "Legal Aspects of the Lytton Report"; and H. W. Briggs, "The Punitive Nature of Damages in International Law."

As in the case of most volumes of this kind, the articles are somewhat uneven and their usefulness depends in large measure on the field in which the reader is interested. W. F. Willoughby makes a valuable analysis of the nature of the problems with which administration is concerned, and A. C. Millspaugh adds some interesting criticisms of the undemocratic tendencies in recent administrative organization. H. W. Stoke and E. P. Herring both point out the difficulties in present-day representative government, the danger of paralysis, and the need for placing the general interest above the interest of petty groups. Several essays urge a more scientific approach to the study of politics, the need of new classifications, greater use of material drawn from other sciences, and closer contact with the changes taking place in the modern world.

In general, the essays maintain a high standard of scholarship and form a valuable addition to the literature of political science, as well as a tribute to a beloved teacher.

RAYMOND G. GETTELL.

University of California.

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A History of Political Theory. By GEORGE H. SABINE. (New York: Henry Holt and Company. 1937. Pp. xvi, 797.)

Professor Sabine begins with the hypothesis that "theories of politics are themselves a part of politics." It is to be expected that mere antiquarians will take issue with the author on this point, and that those who say with Goethe that "the truth has long since been discovered" will find fault with the social relativism of which this hypothesis is an expression. For Professor Sabine maintains that, "taken as a whole, a political theory can hardly be said to be true," but that the "judgments of fact" and the "estimates of probability" which it contains, as well as the weighing of "logical compatibilities" which it involves, are affected by "valuations and predilections, personal and collective." This is not saying that these judgments and estimates may not prove to be, in some cases, "objectively true," or that a political theory is necessarily narrowly instrumental in the sense of having deliberately been made subservient to ulterior personal or collective purposes, but that it is "produced as a normal part of the social *milieu* in which politics itself has its being."

Others have thrown out hints to this effect before, but the present reviewer knows of no comprehensive history of political theory in which this basic proposition has been so consistently sustained and acted upon. In Professor Sabine's book, theories are always presented in the historical socio-political setting which conditioned them and with which they, in turn, interacted.

Since this work is more than a résumé of the more important political theories, the author's own "philosophical preferences" are of such an interest as to entitle them to more than a casual remark, even within the compass of a book review. Professor Sabine is an empirical positivist who concurs in the general results of Hume's criticism of the "intellectual confusion inherent in the system of natural law." Hume drew an antithesis "between reason in the formal sense, causal relations uniting matters of fact, and judgments of value or obligation," factors that had all been fused in the system of natural law. Professor Sabine maintains that "it is impossible by any logical operation to excogitate the truth of any allegation of fact, and neither logic nor fact implies a value." He extends this criticism to the Hegelian and Marxian dialectic, which perpetuated the confusion by again attempting to "bridge the gulf between reason, fact, and value." He points out that the Hegelian and Marxian varieties of "historical necessity" are no more capable of empirical verification than the "belief in rational self-evidence" which they displaced. As to value-judgments, "they appear to the author to be always reactions of human preference to some state of social and physical fact. . . "

In a review of a comprehensive work such as this (it encompasses, in its almost 800 pages, the history of Western political thought up to the

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present time), space forbids the presentation of the customary "table of contents." In selecting theories for inclusion, the author obviously was guided by his original hypothesis, and not simply by considerations of space. In the opinion of this reviewer, the chapters on Aristotle, Hobbes, Hume, Hegel, and Marx are especially well done.

In view of what was said concerning the author's criticism of Hegel and Marx, a few words must be added to forestall a wrong impression. Although Professor Sabine places speculation about historical "necessity in the realm of "calculation of probabilities," he does not dismiss these prognoses off-hand but reserves judgment on some points, depending on time to show whether they are objectively right or wrong. Also, doubts concerning the objective truth of some of their conclusions do not prevent him from appreciating the fact that these theories may still be of great significance as philosophies of social action.

The book is so altogether satisfactory that one hesitates to criticise such a minor point as the tacit assumption which seems to pervade the discussion of Bodin, that the introduction of the idea of the *Rechtsstaat* and the attribution of sovereignty to it marked an advance in methodology. In spite of Bodin's confusion, he seems to have been on safer ground than some of his critics. For the doctrine of *governmental* sovereignty does not present the inherent difficulty from which the doctrine of *state* sovereignty suffers, namely, the problem of avoiding an antimony.

The book is the work of a mature scholar with analytical acumen and with a competence in general philosophy that are difficult to match. Moreover, it is written in a lucid and compact style, with frequent summaries that are models of conciseness. These qualities, as well as the bibliographical notes at the end of each chapter, should insure its favorable reception as a text-book. It is a text-book, to be sure, but a text-book with a difference.

HENRY JANZEN.

Hamilton College.

The Lasting Elements of Individualism. By WILLIAM ERNEST HOCKING. (New Haven: Yale University Press. 1937. Pp. xiv, 187.)

This volume includes a group of six lectures delivered at the University of Indiana. The ideas contained therein are not fully developed, and the result is the presentation of the materials for a much larger study than is here undertaken. The book can hardly be reviewed without incurring the danger of rearranging the materials. This might lead to conclusions not intended by the author, which would be unfair to him.

The thread of continuity which undoubtedly runs throughout the lectures is that "no nation can exist unless the idea of the nation finds an intelligent resonance in the minds of the individual citizens." Individual-

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ism as a concept gained meaning as early as the fourteenth century, but not until after the Reformation did it attain political significance. The concept became imperishable in the thought of John Locke, whose individual not only was the bearer of rights but also was endowed with a moral sense. But the liberalism which has developed from this older concept of individualism has proved defective, chiefly because it could not alone achieve social unity and tended to cultivate the pernicious notion that rights can exist without correlative duties. The achievement of human freedom lies in the extension of the individual will by the creation of the state as the responsible agent of its members. That is not to say, however, that the individual will is submerged in that of the state. It continues to function as co-agent with the state, so that the deeds of the state are *ipso facto* the deeds of the citizen, the extrapolation of his will. The result is the co-agent state, which "is based on the unanimous action of free individuals."

This may all be very well, but the peril lies in the ease with which the individual conscience may be brought to succumb to the purposes of the state. In a democracy, the larger issues are fairly clear and the citizen is asked to consent to more or less definite proposals. Moreover, the representatives of the people must periodically return to the electorate to obtain a fresh mandate, even though they do their work well. Minorities have the opportunity to be heard and to make their influence felt in popular elections. We shall doubtless continue to prefer the democratic state to one which purports to bear and to interpret the individual conscience.

WILLIAM S. CARPENTER.

Princeton University.

Les Idées traditionnalistes en France de Rivarol à Charles Maurras. By ALFONSE V. ROCHE. (Urbana: University of Illinois Press. 1937. Pp. 235.)

This is primarily a work of literary criticism. Its chief importance and interest for students of political science derive from the fact that the work deals with writers who cannot be ignored in connection with modern French politics and political thought. These writers fall into two categories. The second consists of certain twentieth and late nineteenth century writers—especially Charles Maurras—who have been the recognized spokesmen for a certain section of opinion of the Right. The first category consists of writers recognized by those of the second to be their intellectual ancestors. Though modern traditionalists, as Mr. Roche emphasizes with some impatience, claim to be supported by parts of the writings of numerous authors for whose essential views and positions they have nothing but contempt, they cite principally names like Rivarol, de

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Maistre, de Bonald, Comte, Taine, Renan, Fustel de Coulanges, Le Play, and La Tour du Pin Chambly de la Charce. Summary accounts of the views of all of these, as well as of those of numerous lesser lights, are included by the author. He gives, in respect of the moderns, three chapters to M. Charles Maurras, and treats of various others, more especially Bourget, Barrès, Bazin, and Bordeaux. The transition from the one group to the other is made through two chapters on the literary aspects of Regionalism, particularly in Provence and Brittany, with a definite preference for Mistral.

Mr. Roche possesses a marked gift for concise exposition. In a style distinguished by unusual clarity, he succeeds in setting out succinctly the essence extracted from the thought of the several authors treated. At the same time, inasmuch as a very large number of persons come in for consideration, even high literary gifts cannot avoid, in the circumstances, some of the appearances and characteristics of an inventory. The explanation is possibly to be found in the conventional requirements of an academic thesis. It is perhaps not unfair to note that a volume of two hundred pages, the printing of which, incidentally, is otherwise exceptionally attractive, contains nearly nine hundred footnotes. The question presents itself whether the essay would not have been more effective if, instead of setting out the principal traits of one writer after another, it had attempted a full account of the more important "traditionalist ideas," referring, in connection with them, to various writers where necessary or desirable. Mr. Roche has manifestly read so widely and assimilated so thoroughly that he could undoubtedly have succeeded in such an attempt. A book of much merit would possibly have been even better.

R. K. Gooch.

University of Virginia.

The Third Reich. By Henri Lichtenberger. (New York: The Greystone Press. 1937. Pp. 392.)

To write on Soviet Russia, Fascist Italy, and National Socialist Germany is a difficult and thankless task. The popular subjective approach leads to a distorted presentation of the subject, giving a picture either too favorable or too damaging to the systems presented. Complete objectivity, even if possible, does not appeal to the general reader.

Lichtenberger's *The Third Reich* apparently is designed to steer a middle course, with studious intent to be fair to the National Socialist régime. The author is not committed to any thesis concerning the merits or baseness of National Socialist ideology and practice, nor does he evade conclusions based upon a scholarly study of the subject. Lichtenberger has the advantage of a thorough knowledge of the Germany preceding the Third Reich, the Germany of Kant, of Goethe, of Nietzsche, of Wil-

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liam II, and of the Weimar Republic. His previous writings testify to that. It is on the background of this knowledge that he presents his picture of the Germany of today under the following nine headings: The Rise of National Socialism; National Socialism in Power; Foreign Policy; The Myth of Race; Spartanism; The Religious Problem; Agricultural and Industrial Organization; The German Economic System; A Frenchman Looks at Nazi Germany.

The system of treatment is that of stating as fairly as possible the ideology of National Socialism as found in the writings and utterances of National Socialist spokesmen and in the laws and decrees through which that ideology is transformed into reality in the institutions and practices for the reorganization of the political, racial, economic, social, and cultural life of the nation. This statement is followed by an impassionate enumeration of conflicting interpretations of friends and foes of the régime. Lichtenberger does not assume the position of arbiter between these conflicting opinions. He does not hesitate to admit that he does not know where the truth is to be found. Concerning his treatment of the economic structure of the National Socialist régime, he frankly concedes that he does not possess the technical knowledge to enter more deeply into the subject. He deserves respect rather than criticism for this caution. Like the Italian corporate system, the National Socialist structure of employer and labor organization, as well as the parallel hierarchy of the industrial associations, is still too much in flux to permit authoritative treatment.

In the first eight sections, Lichtenberger speaks as the scholar, the spectator from somewhere in no man's land. In the last section, he is the Frenchman, or rather the spokesman of "the French" in his and their reaction to National Socialist ideas and practices. We French, he says, "float about amidst thousands of conflicting sentiments ranging from decided horror through mistrust and uneasiness up to curiosity mixed with sympathy and regret that we do not have a 'strong man' like Hitler in France." There is general grief over "the deliberate intolerance proclaimed by the Nazis," over the "appeal they make to the fanaticism of the masses" and the "determined brutality of the measures whereby they seek to impose their power." The French are not particularly shocked by National Socialist theory. To be sure, they reject the extremes of their racial doctrines, just as they condemn the practices resulting from these doctrines. Hitler's disdain of intellectuals and esthetes finds sympathizers in France. The French look with admiration upon the unquestionable growth of social solidarity accomplished through labor camps, youth organizations, etc., though they would not accept the degree and extent of regimentation necessary to accomplish the desired result. Spartanism is something of which France, too, has need. For Hitler's foreign policy,

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France has understanding. His good faith in asserting his peaceful intention, France is ready, or should be willing, to accept in spite of his contrary views expressed in *Mein Kampf*, which have never been expressly disavowed. To be sure, Germany, the "Volk ohne Raum," may insist upon expansion. Germany may demand from England and France the return of her colonies, or a free hand in the East. France must be friendly, cautious, ready for all events; she must wait and see!

Having chosen the moderate middle course, Lichtenberger has been forced to blunt the sharp edges of his subject-matter in both directions. He admits the inevitableness of the National Socialist régime without extolling the extremes of its ideology. On the other hand, he avoids giving offense to National Socialist Germany by excluding from his description details of the excesses in practice. Perhaps he is conscious of the difference between the ideals of the French Revolution and the excesses practiced by the revolutionists seeking to realize their ideals.

The copious Appendix should be read in connection with the corresponding subject-matter of the book. Failure to do this might place some of the documents in a false light, as for instance "The Twenty-five Theses of the German Religion."

JOHANNES MATTERN.

The Johns Hopkins University.

The Spirit and Structure of German Fascism. By ROBERT A. BRADY. (New York: The Viking Press. 1937. Pp. xix, 420.)

Germany; The Last Four Years. By GERMANICUS. (Boston and New York: Houghton Mifflin Company. 1937. Pp. viii, 116.)

The Renaissance of Democracy. By G. S. GRACCHUS. (New York: Pegasus Publishing Company. 1937. Pp. 153.)

The democratic dogma was born a creed of aggression, and therein lay primarily its strength. Once established, it was never seriously challenged. As it seemed to need no armature of defense, it grew unwary and self-contained. Has it become too unelastic to hold its ground against a twentieth-century robot claiming to out-democratize democracy? Certainly those who currently articulate their fears for what they cherish as free institutions are not an optimistic lot. And, paradoxically enough, their cardinal contribution thus far has been to build up the menace of fascism to monstrous proportions and to spread fright among their own ranks. As a result, efforts to strengthen democracy's governmental equipment and to intensify its social effectiveness are halted by the cry of "dictatorship." This is not surrender; it is suicide. If the idea of democracy should be degraded to unbending *status-quo*-ism, political, social, and economic, it would cease by itself to be a living force. But the same

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effect might be achieved should the prevailing indiscriminate use of the term "fascism" turn democracy into a hypochondriac. In this respect, careful analyses of totalitarian régimes promise to be both a prophylactic and a curative.

Professor Brady's investigation of the National Socialist state is neither of these, for its *Leitmotiv*, ringing forth from every chapter, is inspired by the familiar Marxist point of view: the difference between the Third Reich and capitalist countries such as the United States lies in the fact alone that the former is "overtly fascist" (p. 384). But in the author's opinion the border-line has already become fluent; he refers in this connection, among others, to the "program of the N. R. A." and to "Tugwell's *Industry Comes of Age*." As should be clear from the two examples, Professor Brady's position leaves him little option in his general conclusions. In fact, he offers only one—that the people of the United States should return all wealth to those who built it. "But it will not come to them as a 'gift'; they must learn that the only solution to recovery of their heritage lies within themselves" (p. 401). As to more specific observations, the study suggests that fascism, in the phrase of the foreword written by Professor Harold J. Laski, "is nothing but monopoly capitalism imposing its will on those masses whom it has deliberately transformed into slaves." In a book so top-heavy with fairly orthodox theses, it is, however, exceptional, and gratifying to students of modern government, that the author has not shunned detail in his discussion of spiritual and economic coördination under the swastika: the *Gleichschaltung* of all intellectual energies; means and methods of opinion management; organization of labor; the incorporation of youth and women's activities; regulation of agriculture and industry ("businessmen, the born élite, should rule"); cartels, monopolies, and fair competition. The closing chapter beholds the "looming shadow of fascism over the world." That, on the whole, National Socialism emerges from this inquiry considerably more homogeneous and consistent in itself, and much more in step with capitalist world development than it actually is, may have its explanation also in the casualness of documentation.

Unlike many bankers, *The Banker*, organ of British banking, displays sedate restraint in its espousal of *laissez faire*. But its recent examination of the economic results of National Socialism (by "Germanicus," here offered in book form), far from supporting Professor Brady's conception of the "born élite," contrasts sharply the interests of the "upper classes" (pp. 38, 44) with the "far-reaching process of Socialization" (p. 37) which German business is undergoing. Livelier and less encyclopaedic than the well-known reports of the Department of Overseas Trade, the exposition offered by *The Banker* is at its best when reaffirming soberly the obvious, less convincing in its use of figures, and occasionally capricious in particu-

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lars. Its chief argument is plain: Germany's troubles "are, for the most part, the result of rearmament" (p. 74), which has created "a considerable international nuisance value" (p. 91). But England, "when confronted by German blackmail" (p. 94), should make no concessions, financial or territorial. The joke of it is, of course, that British rearmament has made this reasoning feasible.

The Banker's "Germanicus," according to the Introduction, owes his insight to a deeply anonymous group of "about a dozen men of some achievement in Germany's military, financial, and industrial affairs," several still holding "high posts in their country" and therefore risking their necks. Gracchus, in his "political essay on the philosophy of solidarism," introduces himself less romantically as one who saw the downfall of democracy and the rise of fascism in European countries, and "being an economist," was "able to assume a critical standpoint." The outcome is this book, "written in popular form," as the publishers say justly. The first part surveys the totalitarian state, the second presents the collapse of individualism and the ascendancy of the new "democracy of solidarism." The disintegration of democracy must be attributed to "the misunderstood and erroneous interpretation" of the principle of *laissez faire* (p. 139). Fortunately, solidarism is already with us—"every piece of [New Deal] legislation represents another pillar in the construction of the temple of American Democracy" (p. 147). And, mind you, "posterity itself will judge the service that the Democratic party of the United States of America and the administration of Franklin D. Roosevelt have rendered to civilization and mankind by firmly reëstablishing true Democracy as the cornerstone of American government" (p. 146).

FRITZ MORSTEIN MARX.

Harvard University.

The Revolution Betrayed; What Is the Soviet Union and Where Is It Going? BY LEON TROTSKY. Translated by Max Eastman. (New York: Doubleday, Doran, and Company, Inc. 1937. Pp. vii, 308.)

To Trotsky, "the Soviet Union is a contradictory society halfway between capitalism and socialism," dominated by a selfish privilege-seeking bureaucracy. In the early days of the revolution, the bureaucracy was kept in check by the party, but this control disappeared when Stalin subjected the party to its leaders and merged the latter into the officialdom of the state. Thus was created the totalitarian state in which the chief glory of man is "personal loyalty to the leader and unconditional obedience." The prohibition of oppositional factions, which were always prevalent under Lenin, resulted "in a bureaucratic impunity which has become the source of all kinds of wantonness and corruption." To overthrow this

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bureaucratic autocracy is the task of the Soviet section of the Fourth International.

Trotsky is especially vehement in his denunciation of Stalin's abandonment of world revolution for the "theory of socialism in one country." This not only constitutes treachery to the cause of socialism, but is bad for Russia as well. The best defense for the Soviet Union lies not in peace pacts, treaties, or even the army, but in strengthening the position of the proletarian and colonial peoples throughout the world. If the enemy is not paralyzed by revolution, "imperialism will sweep away the régime which issued from the October revolution, [for] in a technical, economic, and military sense, imperialism is incomparably more strong." Peace is only temporary. "The power which is restraining for the time being the fury of war is not the League of Nations, not mutual security pacts, not pacifist referendums, but solely and only the self-protective fear of the ruling classes before the revolution."

The new constitution with its façade of democratic forms, the limitations placed on abortions, the increased importance of family ties, piecework and Stakhanovism, the provision of private gardens, cows, and chickens for the members of the collective farms—all are condemned as further evidences of the betrayal of the cause of the socialist revolution and a return to bourgeois principles. To save this cause, Trotsky proclaims the need of a new purely political revolution, a proclamation which in turn lends convenient justification for Stalin's recent ruthless use of the firing squad.

Max Eastman has provided an extraordinarily fine translation. The book sparkles with epigrams pronounced with dogmatic authority. Charging that Stalin's "socialist system of money and prices was developed only after the twilight of inflationist illusions," Trotsky observes: "The owl of wisdom flies, as is well known, after sunset." This statement at times seems equally applicable to many of Trotsky's criticisms, and he is indeed loath to heed his own wise observation: "If a theory proves mistaken, we must revise it or fill out its gaps." The mistakes and omissions of the present régime would not be so glaring if more consideration were given to the opposition forces—external as well as internal—which have played an important part in shaping the course of events.

E. C. Helmreich.

Bowdoin College.

The Government of Switzerland. By William E. Rappard. (New York: D. Van Nostrand Company. 1936. Pp. ix, 164.)

As a volume in "The Governments of Modern Europe" series, this book complies fully with the general purposes set forth by the publishers. It is "a complete treatment of a single government, presented not only

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from the political viewpoint, but also with a broad background of other knowledge—geographical, historical, ethnological, and economic." Professor Rappard is concise, factual, and statistical, to a degree which makes his work more suitable as a reference than as a text for classroom use. On the other hand, it has a distinct appeal for American readers, because the author knows his United States almost as well as he knows his Switzerland.

Professor Rappard does not hold so high an opinion of Swiss *Landsgemeinden* as do most foreign observers. Certainly, however, the comparison he draws between them and a football crowd does too much honor to the latter. Commenting on the failure of the extremely democratic Swiss to enfranchise women, the author first notes that Switzerland is neither an aristocratic nor a proletarian country, being governed by the lower middle class, and adds: "Now all history and all geography show that woman comes to her political rights in the drawing room and in the workshop before she does in the kitchen." It is a curious fact, but quite typical of Swiss dislike of hero worship, that the name of only one living Swiss statesman is mentioned—and that quite casually—in Professor Rappard's pages.

While all the chapters of *The Government of Switzerland* are thorough and workmanlike, the three devoted in conclusion to Political Parties, Domestic Policies, and Foreign Policies are particularly interesting. In spite of occasional sensational stories about the Swiss *Fronten* which appear in our newspapers, Professor Rappard is not greatly impressed by the alleged progress of fascist ideas among his compatriots. "The present nationalistic, dictatorial, and totalitarian régimes in Germany and Italy, whose aspirations most violently offend against the Swiss ideals of coöperation, freedom, and democracy, have still further tended to fortify the desire to preserve their own national independence."

Admitting the progress of socialistic ideas in the Alpine republic, Professor Rappard remarks with a certain acerbity that the 1935 platform of that party "cannot but strike the impartial observer as shockingly demagogical, distressingly bureaucratic, and bafflingly utopian." Barring war or the dominance of personal preferences, his final conclusion is that "in Switzerland as in the other surviving liberal democracies, political individualism will in the end prevail over all opposing influences."

ROBERT C. BROOKS.

Swarthmore College.

Byrokacie. BY JAN MERTL. (Prague: Orbis Publishing Company. 1937. Pp. 265.)

The problem of bureaucracy in Central Europe is fundamentally different from that in the United States and England. For this reason, as

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well as for the obvious ability of the author, a young Czechoslovak social scientist, we welcome this theoretical and practical study of bureaucracy from the socio-political viewpoint. It is concerned primarily with analysis of the main relations between the state and the leading bureaucratic elements.

In order to determine the comparative characteristics of the Czechoslovak bureaucratic system, Dr. Mertl surveys briefly the problems of bureaucracy in England, the United States, and France, "as each of these democratic states represents a certain outlined type of modern democracy." We regret only that we find here no comparison of the bureaucracies of contemporary democratic states with those of modern dictatorships.

The most original and interesting sections of the book are, however, those dealing with the Czechoslovak system. We find here the historical background, with the author tracing the development of bureaucracy in the old Austro-Hungarian Monarchy and showing the post-war reaction and resentment against that institution due to identification in the popular mind of everything bureaucratic with the overthrown Empire. An additional problem was created by the fact that the new Czechoslovak Republic had to employ numerous leading bureaucrats, formerly employed by Vienna, since no other trained personnel was available. But the political system of Czechoslovakia has favored the most extensive use of bureaucracy, with the result not only that there is today an excessive number of civil servants, but that the service is still (although to a somewhat smaller degree than formerly) considered one of the most desirable careers. The author points out the dependence of civil service promotions on the influence of various political parties, accentuated by the circumstance that several executive departments have been headed only by ministers drawn from given parties, e.g., the Ministry of Agriculture by Agrarian ministers. A definite curse of the whole system is the belief of the people in the so-called "interventions." Many bureaucrats refuse to decide cases simply because they fear political influences. On the other hand, the petitioner has no way of forcing a decision, and has learned that the most effective way of getting something accomplished is to ask a deputy to "intervene" for him. Although such action is unconstitutional, it is one of the most strongly established political practices in Czechoslovakia. Equally interesting are the remarks of the author on attempts to reform the system.

Dr. Mertl's conclusions also deserve to be noticed. Bureaucracy forms a part of the state apparatus, and its structure and evolution are determined by the structure and evolution of the political element of the state. In the democratic state, this development depends on (1) what kind of bureaucracy existed in the state before the introduction of its democratic

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system, and (2) what type of democratic government was introduced. The importance of bureaucracy depends upon the degree to which a state intervenes in the life of society, and the character of bureaucracy depends to a large extent upon the social and educational background of its individuals. No democratic state can do without a bureaucratic system.

An extensive list of works in various languages is included, although several important titles have been omitted. Altogether, the study is the best and most up-to-date upon the subject as yet published in Central Europe.

JOSEPH S. ROUCEK.

New York University.

Neutrality for the United States. BY EDWIN M. BORCHARD AND WILLIAM POTTER LAGE. (New Haven: Yale University Press. 1937. Pp. xi, 380.)

Neutrality means not a partial concession of rights to one side, but an impartial enforcement of rights as against both sides. Of this fact the authors of the present volume remind us over and over. Throughout the volume we find clear and forceful views well fortified with illustrative material showing careful and considered observation.

During the eventful years 1914–17, our government was neutral in theory but unneutral in practice. The Wilson Administration favored the Allied cause, as did also the American ambassador in London and Col. E. M. House, who was Wilson's closest adviser. Secretary of State William Jennings Bryan stood alone as the real neutral, who believed in warning our citizens not to travel on belligerent merchant ships, who desired an embargo on munitions, who wanted a prohibition on war loans, and who now looms larger as statesman and prophet, since Congress has just enacted his ideas into the neutrality law of 1937.

The present volume is divided into three parts. The first four chapters constitute the introductory portion in which the reader will find (1) a general explanation of the rules of neutrality; (2) important precedents in the history of American neutrality since Washington's time; (3) a brief record of the unneutral steps taken by Wilson during the period 1914–17; (4) a discussion of the post-war efforts to discredit the whole concept of neutrality and to exalt the idea of all nations coöperating to stop aggressors.

In Part II, the reader finds much the larger portion of the volume's contents. Here the title might well be "Unneutrality" for the United States. We find a careful recording of the numerous manifestations of that unneutrality which helped to steer the United States into the conflict. The Administration tolerated guns on British merchantmen, but not on German ships leaving American harbors. It wrote soft notes of protest to

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Great Britain, but delivered what were really ultimatums to Germany. It protested submarine warfare against those civilians who were found on armed and unarmed belligerent merchantmen, but it endured cruiser warfare which was aimed to starve civilian peoples on land. It assumed that submarines, though warships, had no lawful right to visit and search merchant ships even when the latter were armed; for the latter had the right to resist search. But it also assumed that armed merchantmen, though not warships, had a right to fire on submarines. Merchantmen were armed in defense, so it was said; while submarines were the aggressors.

Freedom of the seas was a proper battle-cry as against the Germans, but whenever it hit the British navy it was to be mentioned softly and sparingly. (Today it is mentioned even more sparingly because, no doubt, it recalls to some minds the questionable war against Germany, and suggests to others the possibility of trouble with Great Britain.)

When writing notes to Germany, the Wilson Administration would "accept no single abatement of right, lest the whole fabric of international law might crumble." But when writing to Great Britain, abatements of right were accepted, and the whole fine fabric of international law did crumble. Congress wanted to warn our citizens against travelling on belligerent merchantmen, but the Administration was afraid that this would weaken its stand in the Lusitania debate. According to the authors, "the persistent refusal of President Wilson to see that there was a relation between British irregularities and German submarine warfare is probably the crux of American involvement."

The authors have well marshalled their facts so as to give support to all that they have to say. The reviewer joins them in wondering whether the submarine and the airplane may not be the counterweight to British objections to abolishing war on enemy commerce, not to omit war on neutral commerce also. (Must we wait for some future fight-to-the-finish in the Atlantic, while the American navy and merchant marine withdraw to a safe distance to await the outcome?) Today, many are wondering also why America ever abandoned her neutrality in 1917, when northern neutrals in Europe suffered much more severely, and yet were able to remain outside the struggle.

Part III consists of four chapters which reveal the many post-war attacks upon the doctrine of neutrality itself. These are for the most part made in America, although some are made abroad for American consumption. They are made by those who offer the Kellogg Pact as a substitute for the League, and who want that pact implemented so as to bring America into coöperation with the League in applying sanctions. They are made by those who, in other words, advocate collective security through consultative pacts, arms embargo pacts, or even pacific blockade

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pacts—all directed at aggressors. At the close of this part comes a clear discussion of the unneutral features of our so-called neutrality legislation, just passed.

The volume as a whole is admirably written. It is well proportioned, except perhaps the introductory part, which could be reduced almost by half. The text is convincing and the references exhaustive. The tone is critical, but in no sense abusive or impertinent. The treatment is dignified throughout. In short, the volume is one which renders a great national service. It should be read by all who sincerely desire that no future Administration may be so poorly advised and so feebly represented abroad when war breaks out as was the Wilson Administration, whose slips caused us to enter the great European war. Today, the neutrality detractors appear to be in retreat; but they are no doubt preparing for further assaults on the law and policy of neutrality.

EARL WILLIS CRECRAFT.

University of Akron.

The United States in World Affairs; An Account of American Foreign Relations, 1936. BY WHITNEY H. SHEPARDSON, IN COLLABORATION WITH WILLIAM O. SCROGGS. (New York and London: Harper and Brothers, 1937. Pp. viii, 312.)

During the last few years, the peoples of the world have lived from crisis to crisis. They have faced the almost constant threat of war from without if not revolution from within. Acute economic distress has brought the inevitable crop of demagogues and dictators, with their promises and demands for bread and power. It has been a period of confusion and chaos. The year 1936, surveyed in this latest "first draft of history," sponsored by the Council on Foreign Relations, was similar to those immediately preceding it in that it marked fresh triumphs for the fascist dictators, a further crumbling of the system of collective security, and as a resultant, a feverish national armament race by all of the Great Powers in preparation for the "next war." Thus, on Armistice Day, 1936, the world's armaments had already far surpassed those with which in 1914 the Powers began the "war to end war," and as the scramble for unilateral security developed, fear and fatalism grew. War, it was widely held, might be delayed; it could not ultimately be avoided.

In all this the United States was more than a curious spectator. There was a real and widespread uneasiness that another World War might well draw us in as it had in 1917, and a consensus of opinion that every effort must be made in advance to assure our neutrality. The policy of the Roosevelt Administration at the outbreak of the Italo-Ethiopian war, as well as the Neutrality Act enacted in August, 1935, reflected this consensus. The government gave the League of Nations its moral support

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and sought by means of an embargo on the export of arms, ammunition, and implements of war, and discouragement of American business men from trading with the belligerents, to contribute toward the localization and speedy termination of the conflict. When the League imposed sanctions against Italy, it also sought, though without much success, to have American oil, copper, and steel interests forego the opportunity for increased profits afforded by additional exports abroad for war purposes. The Neutrality Act of February, 1936, extended the temporary legislation of 1935, and added amendments calculated to isolate the United States still further from warring nations. The record of 1936 reveals, however, that the government of the United States could not be accused of having merely a hermit outlook on the world. In addition to renewed effort for naval limitation, President Roosevelt and Secretary Hull sought with some success to strengthen the peace system of the Western Hemisphere, and, in the economic field, to open trade doors in all parts of the world by means of reciprocal trade agreements.

The present volume is to be commended both for its style and content. Care and discrimination have been used in the selection of the events recorded, and in nearly every instance the interpretations offered and the opinions expressed seem at this writing to be unassailable.

FRANK M. RUSSELL.

University of California.

Raw Materials in Peace and War. By EUGENE STALEY. (New York: Council on Foreign Relations. 1937. Pp. 326.)

Representing an analysis of the "effects of the unequal distribution of basic commodities on world trade, movements of capital, military preparedness, and international security," this excellent study was prepared as a report for the tenth session of the International Studies Conference which met at Paris on June 28, 1931. Its preparation was under the direction of a sub-committee "on raw materials and markets as they affect the problem of peaceful change," appointed by the American Coördinating Committee for International Studies. Professor Charles K. Leith served as chairman of the sub-committee, with Professor Eugene Staley as *rapporteur*, the other members being Edwin F. Gay, Frank D. Graham, Alvin H. Hansen, E. G. Nourse, and Jacob Viner. While the sub-committee as a whole participated in mapping out the general plan of the work and subsequently contributed suggestions and criticisms, the *rapporteur* was responsible for the collection of the material and the writing of the text. Although his book contains nothing particularly new on the factual side of the question, it makes a distinctive contribution in the field of international relations through the excellent coördination and

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arrangement of available data on the problem of raw materials in relation to peace and war.

The study itself is divided into three parts, together with an appendix. Part I, entitled "Introduction," comprises two chapters, one defining the raw materials problem itself and the second containing an excellent summary of the position of the United States as the world's largest consumer and producer of essential commodities. Part II, entitled "Raw Materials Problem Occasioned by the Menace of War," likewise consists of two chapters, the first dealing with "The War-time Significance of Raw Materials," and the second being entitled "United States Policies: War-time." The latter deals primarily with the relation of America's unexcelled raw material position to its past, present, and future neutrality policies.

Part III, devoted to "The Raw Materials Problem Under Peaceful Conditions," includes Chapters 5–12 inclusive and forms three-quarters of the volume. As in the other two parts, the relation of American policies to the problem of raw materials receives primary emphasis. Chapters 5, 6, 7, and 9, which are concerned primarily with the uses and abuses of economic nationalism, contain a shattering indictment of the prevailing trade and financial policies of nations. Chapters 8 and 10, which deal respectively with the trade and the investment policies of the United States, again serve to illustrate in dramatic fashion the dominant rôle played by this country in world commerce and finance. Chapters 11 and 12, which are concerned with "the procedure for the peaceful solution of the raw materials problem," not only state the grievances to be met in prevailing trade and investment policies, but also suggest the possible methods of meeting them.

The Appendix, which is unusually valuable for purposes of reference, is divided into three sections. In Section A, the important raw materials of industry and their chief uses are noted. In Section B, there is indicated, through the medium of a carefully prepared outline, the various degrees of monopoly power which may be exercised with relation to specific commodities. In Section C, there is a most useful summary of the raw-material-control schemes in different commodities, with aluminum, coffee, cotton, copper, mercury, molybdenum, nickel, petroleum, potash, rubber, and tin of primary concern.

Although it is impossible, within the confines of a brief review, to include any factual material, certain of the conclusions reached by Professor Staley, as presented in Chapter 13, should be noted. While admitting that the international raw material problem is primarily an armaments problem, he emphasizes the fact that "under conditions in which nations could feel reasonably safe against war, there is no reason to think that raw material needs and policies would themselves produce conflicts

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unsolvable by peaceful means." Among the peace-time practices of nations productive of war-time fears in relation to raw materials, economic nationalism and the abuse of monopoly power receive their just indictments.

The peaceful solution of the international raw materials problem, according to the author, calls for procedures of three types: (1) "measures to establish collective security against war, so that nations can regard raw materials in some other light than as armaments; (2) measures to reduce economic nationalism, so that it will not be necessary for nations to have political control over raw material sources or markets in order to be sure of access to them in time of peace; (3) measures to meet specific raw material problems that give rise to friction: problems of monopoly, of control schemes, of access to raw material resources for purposes of exploitation, of protection to alien investors and enterprises, and of protection to the countries where they undertake operations.

In the realization of the above procedures, Professor Staley wisely points out that "Great Britain and the United States," who "control the largest share of the world's raw material resources . . . ," together could do much to make mineral and other raw material sanctions effective instruments in support of a collective system, and they could lead effectively in removing fears of other countries regarding access to raw material supplies or abuse of monopoly power in time of peace. "No single nation," he concludes, "will have greater influence in these questions than the United States itself."

BROOKS EMENY.

Western Reserve University.

Economic Planning and International Order. BY LIONEL ROBBINS. (London: Macmillan and Company, Ltd. 1937. Pp. xv, 330.)

Every page of this book-length essay in political economy bristles with challenges; every paragraph either scores a hit for the author's thesis or lays him open to the thrusts of an equally subtle opponent. Robbins is no tyro. He is armed with the invincible weapon of classical economics, which he understands thoroughly and uses with infinite ingenuity and consummate skill.

Undoubtedly disgusted with the modern emphasis on "planning," he proceeds to analyze different types of "planning" and to test them by their effect upon the international community as a whole. Defining planning as the "collective control or supersession of private activities of production and exchange," he distinguishes three classes or types: (1) independent national planning; (2) proposals for international controls of particular sections of the economic field; and (3) complete international planning on both socialist and liberal lines.

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Asserting under the first heading that "our age is an age of independent national planning," he critically examines the chief devices now employed by national authorities—tariffs, subsidies, control of production and investment, trade controls, manipulation of foreign exchanges, and restrictions on migration. One by one, he shows these to be destructive of trade, wasteful in the use of men and resources; and the final result of all to be productive of instability, friction, and war.

International planning of particular kinds of economic activity—particular industries, trade channels, and conditions of labor—fares no better in the face of his careful attack. These devices restrict production, stereotype conditions in favor of high-cost producers, breed corruption because of the tie-up with government, create resistance to change, and subject the welfare of the whole community to the selfish interests of a few favored groups.

Complete international planning such as is envisaged under world socialism is "not yet practical politics;" but assuming for his argument that it is, the author proceeds to demonstrate that without the yardstick of the cost and price mechanism of the free market (repugnant and impossible to communist philosophy), the economic satisfaction of wants cannot be achieved.

Concluding with a statement of the essentials of the liberal system—the familiar orthodox theory of classical economics, with apologies for its contradictions and shortcomings—Robbins once more affirms the superiority of a system which he declares "has never yet had a full chance", but which many others, as competent as he, will stoutly maintain has been tried and found wanting. The author's studied attempt to establish the first two categories as types of "economic planning," and then dispose of them by holding them against the classical theory, will be sharply questioned by many readers. What Robbins in these cases calls "planning" looks too much like the reprehensible manifestations of the classical ideal in actual practice.

GEORGE H. E. SMITH.

Yale University.

Twenty-five Years of the Chinese Republic. ANON. (Nanking: International Relations Committee, 18 Honan Road. 1937. Pp. 211.)

Chiang Kai-shek und die Regierung der Kuomintang in China. BY GUSTAV AMANN. (Heidelberg and Berlin: Kurt Vowinckel Verlag. 1936. Pp. viii, 240.)

These two recent works on political China present a few interesting resemblances and many striking differences. Both deal with the immediate past; both are friendly to Chiang Kai-shek and unfriendly to the

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Left; both present points of view with which Americans may be expected to differ; both contain factual information which is not available elsewhere; and both are sequels, in a sense, to preceding works. The Chinese compilation, for which no editor or author is given (the prefator being a Mr. Kan-li Kiang) supplements M.T.Z. Tyau's *Two Years of Nationalist China* (Shanghai, 1930). Herr Amann's work follows his earlier *Sun Yatsens Vermächtnis* (Heidelberg and Berlin, 1928; English translation, *The Legacy of Sun Yat-sen*, New York and Montreal, 1929) in giving a chronicle and interpretation of the years 1927–33, taking up the story where the previous work left off. The chief difference between the books arises from Amann's emphasis on politics and personality and the Chinese stress on forms and offices.

Among the contributors to *Twenty-Five Years of the Chinese Republic* are Chiang Kai-shek, who writes on unification and reconstruction; Chu Cheng, president of the Judicial Yuan, on the judiciary; and the following on their respective fields—Sun Fo, president of the Legislative Yuan; Tai Chi-t'ao, president of the Examination Yuan; Yü Yu-jen, president of the Control (censoral) Yuan; H. H. K'ung, minister of finance; Wang Shih-chieh, minister of education; J. Heng Liu, director-general of the National Health Administration. Chiang Tso-pin, minister of the interior, contributes an informed article on local self-government; and Messrs. Fang Chi, Li Ti-tsun, and an anonymous contributor write on party principles, foreign relations, and national economic reconstruction. The author knows of no other work on Chinese government so studded with distinguished names, and from which so much might be expected. Unfortunately, it is the Chinese custom, as noted by Lin Yu-tang, for officials to rely quite heavily on ghost-writers, and to prefer literary interest to positive statement. Much of the work is mere repetition of the stylized formulae of official praise and innocently undisguised propaganda.

There is a good deal of valuable secondary information, although the major problems of present-day China can be gauged only by indirection. There is nothing about military affairs, little on the land problem, nothing on the de facto position of the National Government; and the Japanese invasions are pussyfooted. Chiang Kai-shek's statement, "At present communism is no more a real menace to China" (p. 3), may be accepted, but with an unintended significance. The volume is magnificently bound and well illustrated, but the title page is on the fly-leaf, the pagination starts four times, in accordance with modern Chinese preference, and the book suffers occasionally from a lack of editorial supervision and proof-reading.

Gustav Amann is a German engineer long resident in China, who has moved freely in Nationalist circles. His work treats the years from the founding of the Nanking government to the conquest of Jehol (1928–33)

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in chronological sequence. His is the most detailed and comprehensive account of this period now available in a European language. He is at his best in describing the cliques and personalities heading them in Nationalist China (e.g., the mention of Tan Yen-kai, p. 83) and in interpreting the social and ideological conflicts between China, Japan, and the West. His generalizations are challenging and frequently brilliant, but his point of view is blurred in focus by his equal sympathy for the Chinese nationalist ideals and the scarcely compatible ideals of Nazi Germany. As he is one of the leading exponents of the school of *Geopolitik* in the Far East, his dialectic is occasionally obscure to Americans. He stresses the nationalist and "socialist" phases of the doctrines of Sun Yat-sen, minimizing their democratic character: "Sun Yatsen's Staatslehre—das junge China wollte dieser ja bei allen Handlungen folgen—ragt wie ein Felsen über die Ebene parliamentarisch-liberaler Demokratie hinaus" (p. 204)—a statement which may be true, but, coming from a German, may also be misleading. Finally, the title of the work may arouse vain hopes, since the book is in no sense a biography of Chiang Kai-shek; it is an excellent piece of nation-wide reporting, in which Chiang's figure is naturally central.

PAUL M. A. LINEBARGER.

Duke University.

The Struggle for the Pacific. BY GREGORY BIENSTOCK. (New York: The Macmillan Company. 1937. Pp. 299.)

Asia's Good Neighbor. BY WALTER KARIG. (Indianapolis: The Bobbs-Merrill Company. 1937. Pp. 308.)

Educated men in China and Japan are well versed in the history and institutions of the United States. Americans cannot return the compliment. Events in the Far East have long since been front-page news; each year the Far East becomes more important in world politics. But the American scholar is still more interested in Europe than in Asia. The appearance of a book sound in content, arresting in style, and broad in vision might well influence the younger generation of scholars to enter this field. Many of us have awaited the clarion call. It suffices to say it is not to be found in either of the two books by Gregory Bienstock and Walter Karig.

Mr. Bienstock's book is the only one which warrants serious consideration. It is divided into three parts: "The Pacific World in the Making," "Rivalries in the Pacific," and "War and Strategy." Unfortunately, the weakest and dullest part comes first. With numerous tables and statistics, the author shows the growth of the Far East in railroads, shipping, airlines, and trade. The story contained in the figures is left to the reader to assemble by himself; the author all too frequently refuses to do it in the

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text. Although fifteen pages are devoted to airways or projected airways, only passing mention is accorded the great increase of Japan's foreign trade.

Part II presents the oft-repeated story of the entrance of the Powers into Far Eastern affairs. The story is told concisely, but with little to distinguish it from many other accounts.

Part III, "War and Strategy," is by far the best part of the book. This reviewer regrets that the author did not deal more fully with probable strategy in a Russo-Japanese or an American-Japanese war. Our English friends, when they envisage a war between Japan and a Western Power, conveniently see it as a conflict between Japan and the United States. Although Mr. Bienstock makes no prophecy, he considers a war between Japan and Russia as the more probable. What would be the outcome? In raw materials—coal, iron, and oil—and in man-power, Russia has a distinct advantage over Japan. Russia might be able to defeat Japan on the Asiatic mainland. But this would not be a decisive defeat for the Island Empire. To defeat Japan decisively, one must have sea-power. In 1935, the total Russian navy, in both European and Asiatic waters, consisted of 4 battleships, 7 cruisers, 27 destroyers, 10 torpedo boats, and 25 submarines. This is hardly a match for the third greatest naval power in the world. Hence *in extremis* Japan need not fear annihilation from Russia. Nor from the United States. The latter country has an adequate navy, but no large naval bases close enough to the Japanese Islands to enable her to fight effectively. Excluding British aid, our nearest large base is Pearl Harbor, 3,400 miles from Yokohama. No navy, even in this engineering age, can successfully steam such a distance, give fight, and then return to its base.

The book is well documented. The bibliography includes studies in many languages, particularly Russian. The American references are for the most part to books published before 1930. No reference is made to the Lytton Report.

Asia's Good Neighbor is a thesis book. The thesis is paraded on the jacket: "We were once—can we be again?" According to Mr. Karig, the United States was the good neighbor of China and Japan in the nineteenth century. So long as we acted unilaterally, we treated these countries with respect. When we began to act jointly with other Powers, *circa* 1900, we became infected with their greed, jealousy, and villainy. The first part of the thesis is true: in the nineteenth century, China and Japan did regard the United States more favorably than they regarded the other Powers. But Mr. Karig does not prove it. He merely says our actions were superior. He offers no evidence that the *Chinese* and *Japanese* regarded them as superior. The second part of the thesis—we are no longer the good neighbor—is highly disputable.

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Early American envoys to the Far East—Samuel Shaw, Caleb Cushing, Commodore Perry, Townsend Harris—are described in realistic if racy terms. In fact, these biographical sketches are by all odds the best part of the book. The author breaks down completely when he endeavors to draw conclusions from the present situation. The style abounds with slang and clichés.

The author treats detail in a cavalier fashion. "Skip it" is his advice while hastening to the many dramatic crises. The scholar will be tempted to apply the caveat to the entire book.

EDGAR P. DEAN.

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New York City.

Japanese Trade and Industry: Present and Future. BY THE MITSUBISHI ECONOMIC RESEARCH BUREAU, TOKYO. (London: Macmillan and Company. 1936. Pp. xviii, 663.)

This is an English translation, with only a few modifications, of the *Nippon-no Sangyo-to Boeki-no Hatten* ("Development of Japanese Trade and Industry"), compiled by the Mitsubishi Keisai Kenkyu-sho (Mitsubishi Economic Research Bureau), and published toward the end of the year 1935. The volume contains a preface from the pen of Dr. Tokuji Nagaoka, the able director of the Mitsubishi Economic Research Bureau. The English translation of the preface is much condensed, but the translation of the text of the compilation, together with the tables, is in full.

It is well to emphasize the fact that while the present study was undertaken with the purpose of elucidating such problems as the recent expansion of Japanese trade in foreign markets and the effects of the Chinese boycott of Japanese goods, nevertheless it maintains an objectivity that is highly admirable. The Mitsubishi Economic Research Bureau is the successor to the economic research department maintained by the great commercial house of Mitsubishi. In 1932, Baron Koyata Iwasaki, former president of the Mitsubishi Goshi Kaisha, reorganized and endowed the Bureau, giving it an independent status; and its subsequent publications have been of irreproachable scientific merit.

Because of the interplay of economic and political forces, the present study will be of service to the political scientist as well as the economist. Three chapters depict the recent economic development of Japan, including the social and educational factors affecting the economic advance. Following chapters give a more detailed analysis of the sources of raw materials, growth and application of capital, cost of production, organization of industry, and the nationalization of industry. A section of the book offers a survey of the basic industries, including agriculture, fisheries, mining, and electric power; while another section surveys such indus-

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tries as cotton textile, silk, rayon, engineering, shipbuilding, chemical, ceramic, sugar, flour-milling, and paper. A fifth section is devoted to banking, insurance, warehousing, and transportation. Finally, recent developments in foreign trade are reviewed with a view to showing the bearings on national economy from the expansion of external commerce, the changes in constituent products and regional distribution, competitive conditions, foreign trade policies promoted by the Japanese government, and the economic relations between Japan, China, and Manchoukuo. Withal, the volume constitutes a comprehensive and scholarly survey of Japanese economic conditions, almost encyclopædic in scope, and invaluable for reference.

KENNETH COLEGROVE.

Northwestern University.

Middletown in Transition; A Study in Cultural Conflicts. By ROBERT S. LYND AND HELEN M. LYND. (New York: Harcourt, Brace and Company. 1937. Pp. ix, 581.)

Caste and Class in a Southern Town. By JOHN DOLLARD. (New Haven: Yale University Press, 1937. Pp. v, 497.)

Robert and Helen Lynd may not aspire to be architects of what sociologists and reformers often vaguely refer to as a new social order, but they are incomparable analysts of our contemporary culture and civilization. With the ecomiums that have been heaped upon them by reviewers from far and near, they must, however, by now, be beyond praise. *Middletown in Transition* takes up the biography of a middle-sized mid-western city where their earlier book, published in 1928, left it. Promethean changes, in science, economics, and politics, have altered the face of American society during the intervening years. The nation has lived through the hell of a devastating depression, capitalist economy has been shaken to its roots, labor has become conscious of its power and is now on the march, but Middletown remains essentially the same. "A Rip Van Winkle fallen asleep in 1925 while addressing Rotary or the Central Labor Union could have awakened in 1935 and gone right on with his interrupted address to the same people with much the same ideas." Getting a living remains the main preoccupation of most Middletowners; for, "one's job is the watershed down which the rest of one's life tends to flow . . . ." Labor, alternately inspired by New Deal promises and intimidated by the X family's hostility, browbeaten by special police, betrayed by spies and fakers in its own ranks, remains for the most part unorganized. When in spite of these things a nascent sense of solidarity appears, it dies under the threats that factory-owners will take their plants and the workers' precious jobs elsewhere.

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Middletown is not, as H. L. Mencken with his sophomoric cynicism said, "a city in Moronia." Rather, it is a microcosm of American life, revealing the ways of men and women in an acquisitive society. It believes in *laissez faire*, that God helps those who help themselves, that government is at best a necessary evil, properly left to *unter mensch* who can be bribed or bullied into serving the ends of their economic masters. The same ambivalence that is found elsewhere is characteristic of Middletown. It believes in progressive education, and individual guidance, but insists on economy, "common sense" methods, and large classes. It waxes sentimental about "academic freedom," but is suspicious of new horizons and atypical ideas. When a social science teacher spoke in favor of the World Court, "a local editorial warned that teachers ought to remember that the schools are supported by taxes." The goal of life is to make money. "It *pays* to send children to college"; "The church has made America prosperous"; "It is desirable to *spend* leisure *profitably*"—so runs the refrain. Middletown believes that "health makes wealth," but malnutrition takes its steady toll and sewers pollute the river that washes the city's shore. "God damn Roosevelt!," said a Chamber of Commerce official, as the city joined in the scramble for New Deal funds to feed the needy and employ the jobless on local public works.

The depression was a nightmare of fear and frustration. Spirits sagged and culturally the community became what Lazarfield has called a *mude gemeinschaft*. But, scarred and bruised, it somehow survived. The ruling business class seems to have learned little from the ordeal. Today finds the X family, in whose shadow the city lives and in whose image it is fashioned, more firmly intrenched than ever. In 1936, the masses supported Roosevelt and Middletown went Democratic—but the employers prayed and labored for a Landon victory. Middletown faces both ways. "Caught between past and future, and not knowing which way to move," say the authors, "one recalls now and again Tawney's characterization of the ruling class in Europe after the French Revolution: . . . 'they walked reluctantly backwards into the future, lest a worse thing should befall them.' "

John Dollard's *Caste and Class in a Southern Town* is a magnificent study of the economic, political, and social implications of race prejudice. It is quite impossible to do justice to this volume in a short review. The *locale* is a Southern town just large enough to be classified as urban and the author modestly makes no claim to comprehensiveness. But as one follows his fascinating portrayal of the intricate pattern of white-black relationships, of how blind prejudice warps the minds of both races, of the sham and hypocrisy which characterize a society tortured by a consciousness of guilt, the impression grows that here is a portrait not alone of a Southern town but of the South. The town is bisected by a railroad

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which marks the color line. On the lower side is "nigger town"—squalid, cheap houses, devoid for the most part of modern comforts and conveniences. Here are the slums where gamblers, prostitutes, and bootleggers congregate. At night, it is lively, and even joyful, in a devil-may-care sort of way. On the upper side live the whites in houses "commodious, well-painted, shrubbed, and neat." The streets are paved; there are electric lights, telephones, and modern plumbing. Nice people live here. At night, it is quiet; "there are fewer people moving on the streets although the number of whites and Negroes in the town is about the same. A sense of discipline and order is more apparent. . . . There is less walking, loitering, and laughing than on the Negro side."

In general, this contrast runs through every phase of community life. Its effect upon family life, sexual behavior, education, getting a living, politics, and religion is described with skillful restraint. Not all the whites are prosperous and not all Negroes are poor. But even the poor whites are comforted by the belief that theirs is the dominant race, and even well-to-do Negroes know that their black skin is a mark of social bondage. Class cleavages are obscured by an intense racial consciousness, but they are present on both sides. Voteless, the Negroes are defenceless and compelled to rely upon white benevolence for what they get. "It is a liberal education," says Dollard, "for the average Northerner to live for a while in a Southern town. He comes to see for the first time what it means to be able to vote, and quite as important, not to be able to vote."

Those whose image of the South is drawn from the early pages of *Gone With the Wind* will no doubt find this book uninviting. But for those who want "a novel, scientific appraisal of one Southern community; insight into the relations between the Negro and white groups; (and) a concrete understanding of what is now called the problem of culture and personality," it is indispensable.

PETER H. ODEGARD.

Ohio State University.

Government Statistics; A Report of the Committee on Government Statistics and Information Services. (New York: Social Science Research Council Bulletin 26. 1937. Pp. xiv, 174.)

This book represents the work of a committee which was organized jointly in 1933 by the American Statistical Association and the Social Science Research Council to consider and report on the organization and planning of government statistics. The report is an important contribution to the literature on statistical services, and will be of value to both the expert and the less mature student.

The first part of the book deals with the general recommendations of the Committee under the categories of organization, allocation of collec-

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tion and tabulation, standards and practices, personnel, and relations with scientific organizations and users of statistics. The Committee, like most earlier qualified groups which have studied the subject, finds little to commend the centralization of statistical activities, but favors proper coördination of decentralized responsibilities. The recommendations for the improvement of the statistical services are well reasoned, and will probably receive the approval of most students of the subject.

On one item, the age of retirement, there will probably be some disagreement with the recommendation. The Committee favors retirement at sixty-four years for all administrative and professional employees. While early retirement increases morale by stimulating promotion, it deprives the services of many seasoned and experienced employees who are still at the height of their powers. No doubt there is some dead wood in key positions, but it is likely that this is due largely to an improper system of promotion. If the lower age is adopted as a general rule, provision should be made for extensions in cases of men of outstanding value.

The second part of the report contains a detailed synopsis of the operations of the Committee.

An Appendix contains a selected list of manuscript and mimeograph material and includes also a valuable summary of the scope of the statistical activities of the several departments and independent establishments. This summary will be particularly useful to those who are not acquainted with the statistical organizations of the national government. An unfortunate error is the statement that the Bureau of Pensions is under the War Department, and publishes statistics of military and civil pensions. The Bureau of Pensions was under the Department of the Interior from 1849 to 1930, when it was consolidated with the Veterans' Administration, which since 1930 has published statistics of pensions and other payments on account of military and naval service. From 1931 to 1934, the Veterans' Administration also published statistics of civil pensions, but the administration of civil pensions is now under the Civil Service Commission, which has published the statistics beginning with its report for 1935.

L. F. SCHMECKEBIER.

Brookings Institution.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

In *The Supreme Court Crisis* (Macmillan Co., pp. vi, 108), Merlo J. Pusey marshals hackneyed arguments against President Roosevelt's defunct court reorganization plan, which he views as an attempt by a president with authoritarian notions to strip the relatively blameless and duty-

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loving Supreme Court of its invaluable function as "the balance wheel of democracy." After a foreword by Senator Edward R. Burke of Nebraska, which has the saving grace of brevity, the author explains how the President, under the illusion that he knew more about the Constitution than the Court did, and with the election safely over, suddenly reached the revolutionary conclusion that there was no way to continue New Deal social reforms save to break down the barrier of recent adverse judicial decisions by "reinvigorating" the federal judiciary. However, alert Americans were not to be deceived by his plan "to enhance the working efficiency of the courts," and soon realized that the President's real intention was to pack the Supreme Court. Nor were many persons misled by absurd charges that the Court had been guilty of "judicial usurpation" in nullifying New Deal legislation, because the Court, according to the author, "passes judgment on a statute only when a citizen alleges that his constitutional rights have been invaded," and "in such cases it has no alternative to measuring the statute against the organic law." Judicial review being as simple as that, judges should not be blamed if an occasional statute falls short, or if parts of the Constitution happen to be a little out of date. Nevertheless, the author might have done well, in considering the Supreme Court crisis, to analyze the significance of the oft-repeated statement that "the Constitution is what the judges say it is," to explain why the future of American democracy might not have been as safely entrusted to President Roosevelt as left in the wavering hands of Mr. Justice Roberts, and to make clear, if "an elective despotism was not the government we fought for," when it was that we fought for a judicial despotism.—ALDEN L. POWELL.

Students of constitutional history will find an excellent complement to the customary legal approach in Burton J. Hendrick's *The Bulwark of the Republic: A Biography of the Constitution* (Little, Brown and Co., pp. xxviii, 467). Dr. Hendrick, whose biographies have twice won the Pulitzer prize, believes that "The Constitution, like everything else, is first of all biography" (p. 7). Consequently, he has selected the men whom he considers to have dominated American constitutional development, analyzed their social backgrounds, and evaluated their respective contributions. As one reads Dr. Hendrick's dramatic portrayal of the rôles of Washington, Madison, Hamilton, and the others, one feels that a good case has been presented for a biographical interpretation. Because of the wealth of material collected, it is disappointing that references to sources are lacking. The work itself is divided into five approximately equal parts. The first, "The United States Becomes a Nation," deals with the background, framing, and adoption of the Constitution; the second, "The Struggle for Existence," with the period from 1789 through Marbury v.

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Madison; the third, "The Rise and Fall of Nullification," continues the story to the eighteen-thirties; the fourth, "The Great Failure of the Constitution," considers the slavery controversy and the Civil War; and the fifth, "The Constitution in the Modern World," ends with a discussion of Justice Holmes's philosophy. These divisions give some idea of the proportional treatment allotted the various periods. Despite the title of the last division, only seventeen pages are devoted to developments since Munn v. Illinois. References to recent events are scattered throughout the work, however, for Dr. Hendrick is a believer in historical parallels. The observations in the introduction indicate the author's attitude toward recent legislation and events. Typical is his belief that the recovery act was "so palpably in violation of the Constitution that no reasonable doubt on the point exists, or ever will exist, whatever new Court may be appointed" (p. xviii). He predicts that "the use of the 'due process' clause for defeating humanitarian legislation . . . will soon be a thing of the past" (p. xxvii). And he thinks that the Supreme Court, in overruling the Adkins case, "has simply turned its face in a new direction and has taken a stand in harmony with the best purposes of the modern world" (p. xxviii).—WILLIAM O. FARBER.

Financial handbooks are valuable guides to the fiscal problems of public administration and public finance. In *Handbook of Financial Administration* (Commonwealth of Kentucky, pp. 353), the staff of Public Administration Service offers recognized financial practice as adapted to the specific needs of Kentucky. Excellent features of the *Handbook* are the unusual number of forms (49), exhibits (17), charts (4), and a final chapter of standardized financial terminology. These contribute greatly to clarity, in which this volume is unique. Detailed procedures are given without obscuring more general topics. Of special interest to students of local government is a chapter dealing with the fiscal relations of county fee offices to the state. Public accountants, auditors, and state officials will be particularly concerned with Part III, which describes, with illustrations, the general ledger accounts together with subsidiary ledgers introduced in the state accounting offices. In 1936, a reorganization act authorized a central department of finance. The staff of Public Administration Service was requested by Governor Chandler to install integrated financial reporting, budgeting, auditing, and accounting procedures. First, a thorough fact-finding investigation was made. Following this, the *Handbook* was prepared. Its purposes were (1) to describe the essential procedures that had been installed, (2) to instruct employees of fiscal offices, (3) to aid in the supervision of such employees, (4) to set forth for all state departments the constitutional and statutory provisions relating to finance, and (5) to furnish interested citizens with a lucid account of

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the state's fiscal methods. The *Handbook* is notable for its discriminating treatment of such complicated problems as the handling of encumbrances, and special funds. Modern office equipment, including the addressograph, the high-speed check writer, and the bookkeeping machine, is required in appropriate departments.—EDWARD W. CARTER.

In his *Studies in Massachusetts Town Finance* (Harvard University Press, pp. 237), E. E. Oakes takes up the financial history of fifteen Massachusetts towns, reviewing the affairs of nine in detail. The author's intention is to emphasize the importance of the benefit principle in local finance. The towns selected for study are chiefly those which have separated from larger towns or have lost territory through separation. The author finds that failure to spend property taxes so as to give proportionate benefits to the parts of towns which pay the most taxes is a prime cause of division of towns. The discussion, however, emphasizes the consequences rather than the causes of division. The towns studied are of several different types, including two towns with electric generating stations where the question of separation is not involved. The analysis of town finance during periods of industrial development and decay, and population increase and decrease, is perhaps the most useful feature of the volume. Many points of interest are presented for states junior to Massachusetts in experience with the fickle fortunes of industrialization. Fiscal data are related to trends in industry, agriculture, population, and in some instances, to questions of local "politics." The book suggests a threshers' dinner—better cooked than served. It would profit by more systematic summary throughout and by graphic representation of trends; it contains maps and numerous tables, but lacks a single chart. The study is, however, distinctly a useful contribution to the literature of local government and public finance.—GEORGE A. GRAHAM.

The *Housing Officials' Yearbook, 1937* (National Association of Housing Officials) is a helpful orientation for political scientists who find their interest in housing aroused by the passage of the Wagner Housing Act. Nineteen competent articles by housing experts (eleven of them federal officials) are supplemented by a glossary of housing terms and directories of official and unofficial agencies. The volume is open to three criticisms which, as a former editor, the reviewer makes in all sympathy with Editor Coleman Woodbury and his staff. First, the volume contains much scattered information but is no ready reference volume like the *Municipal Yearbook*. It badly needs an index. Second, the authors who drew their pay checks from Uncle Sam seem to share the customary propensity of federal officials to "describe the work of the organization" by writing excruciatingly dull accounts of the procedure of the organization.

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Procedure is important, but some of us would like to know about the extent of the problem, the volume of business (if none, then the reason why), the interworking with other agencies, and the other live problems in the field of housing, instead of reading something reminiscent of the directions on the income tax blank. However, a few articles are happy exceptions. Editor Woodbury himself, Miss Catherine Bauer, and a Londoner named Richard L. Reiss contribute interesting articles, respectively, on the past year's progress, the need for housing measured in terms of population growth, and a comparison of British and American housing costs which sharply criticizes high costs of P.W.A. and resettlement construction. Students of municipal administration will be interested in a terse criticism of municipal building codes by James J. Taylor, of the P.W.A. Housing Division, and all of us should look at the directories to see if our own communities have housing agencies.—GEORGE C. S. BENSON.

Professors R. A. Egger, H. I. Baumes, and Raymond Uhl's *Training for Public Service in Virginia* (Bureau of Public Administration, University of Virginia, pp. 88 mimeo.) is an appraisal of such in-service and pre-entry training for the public service as we have in Virginia. The state stands high, "second only to New York, in the diversity in short-course training programs which it has offered," and the number of local employees reached by these courses. The Virginia League of Municipalities has been active in promoting training schools for police, fire, water-works, and other officials. Professor Egger does not over-emphasize the need for in-service training, because the rank and file of state and local employees in this commonwealth have not been recruited according to any formal merit system. There is only one such system in the state, the one in Norfolk for fire and police officials. As nearly everyone knows, a tradition of high public service in Virginia results in getting remarkably well qualified men (that is, above the average) for the political and the higher executive posts. But the reviewer's notion is substantiated by the authoritative statement of Professor Egger and colleagues that this noble front covers up a good deal of discontent caused by inequality of pay, lack of opportunities for promotion, and the generally low prestige of the offices in the middle and lower ranks of public service in Virginia. More prestige value is attached to a job in the Bell Telephone Building on Broad Street in Richmond than to one in the State Office Building on Capitol Square.—JAMES E. PATE.

The Municipal Charter Problem in Florida (Chicago: Public Administration Service, pp. 21) contains the findings and recommendations of the American Municipal Association in a rather limited survey of the munici-

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pal charter problem in Florida. The field work was done and the report prepared by Mr. Donald Stone, Dr. Joseph Pois, and Mr. David L. Robinson, Jr. The survey (rather seriously limited because of lack of funds) was made for the Florida League of Municipalities and the joint legislative committee of the Florida general assembly. As pointed out in the pamphlet, the municipal law of Florida "is utterly lacking in uniformity of origin and application, the municipalities being controlled by legislation of widely varying types and effect." But there are some things to be said for the system of local legislation found in Florida—it possesses flexibility and a considerable degree of home rule is allowed. A broader plan for home rule is recommended, and the establishment of a bureau of municipal research is urged. The study is a valuable one; but, as Mr. Clifford Ham, executive director of the American Municipal Association, points out, a more comprehensive one could have been made if several thousand dollars had been set aside for the purpose.—CULLEN B. GOSNELL.

Marshall E. Dimock and George E. C. Benson have attempted to give a brief answer to the question, *Can Interstate Compacts Succeed?* (University of Chicago Press, pp. iv, 21). After a brief historical survey shows "that the Colorado River episode, like that of the New York Port Authority, augurs little good for the interstate compact as a means of settling serious conflicts of interests between states," and also that "the interstate labor compact movement must be written off as a failure," the authors proceed to minimize the disadvantages of interstate compacts, suggest that "ancillary federal control can actively insure" their effectiveness, and optimistically conclude "that the potential utility of the device extends to the entire range of permissible legislative activity."—HOWARD WHITE.

Newcomers and Nomads in California (Stanford University Press, pp. ix, 128), by William T. and Dorothy E. Cross, is a carefully documented study of the problem of indigent transiency in a state which suffers very acutely in this respect. Analyzing transient relief policies and their administration since 1933, the authors recommend many changes, such as reduction of residence requirements for local relief and modification of the "go back home" attitude. They urge the formulation of a permanent national policy to provide subsistence, employment, health, education, stability, and citizenship for this growing, mobile, and basically valuable element in our population. Interesting devices to implement these general objectives, also, are suggested.—CARLTON C. RODEE.

FOREIGN AND COMPARATIVE GOVERNMENT

In *Le Chef de l'État* (Paris: Editions A. Pedone, pp. 241), a French writer, Jacques Ranchin, undertakes to evaluate the development of the

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German presidential office under the constitution of Weimar and the beginning of the National Socialist régime. In spite of occasional inaccuracies, the study is from a juridical point of view quite thorough. It is divided into three parts: the first deals with the parliamentary cabinets under Ebert and Hindenburg from 1919 to 1930; the second is devoted to the presidential cabinets between 1930 and 1933; and the third—very brief—is given over to the first year of the National Socialist régime. In presenting his materials, the author has alternated between chapters in which he analyzes the situation confronting the president at each formation of a cabinet, and others in which he describes the more general problems and indicates his own conclusions. This manner of treatment makes for a certain measure of realism. The bibliography shows, however, that the author has not gone into the large amount of historical material dealing with the formation of the several cabinets, for example, such as that contained in Stresemann, *Vermächtnis*, and hence his interpretations are often too formal and subjective for historical criticism. It is, moreover, to be noted that the author has limited himself to German sources; there is no reference to English material, even to Heneman's study based on practically the same material. In spite of these shortcomings, M. Ranchin's treatment is to be welcomed, since it frequently is illumined by comparison with analogous French situations and is written with a remarkable detachment from any of the partisan views which ordinarily enter discussions of these problems at the present time.—CARL J. FRIEDRICH.

The Story of Dictatorship from the Earliest Times till Today (E. P. Dutton and Co., pp. 231), by E. E. Kellett, is a collection of "stories" of tyrants—defined as "men who retain a permanent power in states which before have enjoyed liberty." Hebrew, Greek, Renaissance Italian, South American tyrants, and Napoleon I are treated in the first part of the volume. This consumes the space of 130 pages. There follows an account of the modern tyrannies of Russia, Italy, Germany, and Austria, which is completed in 70 pages. The shift from *tyrants* to *tyrannies* signalizes a corresponding shift in treatment from sketchy anecdotes of individual tyrants to a very general comparative approach in which the individual prime-mover is a somewhat unlocated point within the circumference of a theory. "The main difference between recently established tyrannies and those we have been considering is that the modern, as a rule, are based on a theory, and are meant to give it political expression." The author believes, however, that Lenin, Hitler, Pilsudski, Kemal, and Mussolini were simply "plying the old trade," and that "allowances being made for mechanical and social changes [which are not analyzed], their methods of gaining and keeping power are essentially

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the same as those adopted by their Sicilian and Italian prototypes." The serious and intensive student of modern (or ancient) dictatorships will probably learn very little from this book, and he will probably be annoyed at the author's extensive use of analogy allusion and poetic quotations. Nor will he relish research methods illustrated in quotations such as "we have to rely on hints" (p. 29); "if we may once more indulge in conjecture" (pp. 30–31); "may be guessed to have" (p. 37); "some say" (p. 66); "he must have been" (p. 113); "it is said that" (ibid.); "if a well-known story is true" (p. 144). There is no bibliography whatsoever, and no indication that the author has seen such works as Schuman's study of the Nazi dictatorship. In the conclusion to the volume the author, apparently an Englishman of liberal leanings, betrays a fear that some form of tyranny may be established in England, either in forced fashion by a combination of the present central and southern European tyrannies, or through the indifference of the population within. He counsels Englishmen who are "still oppressed" to "cleave to what they have, and thus be in a position to demand more."—J. G. HEINBERG.

Although the small band of officers who attempted to set up a new order on the accession of Nicholas I were still "thinking in terms of eighteenth-century palace revolutions which were chiefly maneuvered by the Guard," they were motivated by aims and ideals which became the well-spring of Russian liberals of the following century. This justifies the title which Anatole G. Mazour gives to his excellent book, *The First Russian Revolution, 1825; The Decembrist Movement, Its Origins, Development, and Significance* (University of California Press, pp. xviii, 324). The revolutionaries were agreed on two fundamental aims—"the abolition of serfdom and the limitation of autocratic power by some kind of representative government;" but ideas of civil liberty, federalism, an agrarian program—even Pan-Slavism and terrorism—are to be found in the writings of prominent Decembrists. Outstanding is the author's exposition of the ideas of Pestel, as expressed in *Russian Justice*. Yet even Pestel had no faith in the masses, and it was only the United Slavs, who actually took little part in the revolt, who believed in appealing directly to the people. Characterizations of leading Decembrists give the book reality, and the details of revolt and trial are carefully done. Special interest attaches to the chapter on the exiles—some 131 of them—and their later life in Siberia. Many Russian sources are used, including some only recently made available for study, and there is an exceptionally well arranged bibliography. Citations only to the volume of magazines or other published collections, when these contain a variety of source as well as secondary material, somewhat mars the value of the footnotes for the ordinary reader.—E. C. HELMREICH.

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INTERNATIONAL LAW AND RELATIONS

International Institutions and World Peace (Arnold Foundation, Southern Methodist University, pp. 286) is a collection of the sixteen principal papers given at the Fourth Annual Conference of the Institute of Public Affairs, held during the week of April 26, 1937, at Dallas, Fort Worth, Waxahachie, and Denton, in Texas. The conference was held under the auspices of the Carnegie Endowment for International Peace. The papers and their authors are as follows: "Forces Which Disturb World Peace," J. Linus Glanville; "International Law and World Order," Montelle E. Ogden; "The International Community and Its Legal System," Robert R. Wilson; "Processes of International Settlement," Charles A. Timm; "The Rôle of International Administration," S. D. Myres, Jr.; "Background and Nature of the League of Nations," C. Allen True; "The League and the Settlement of International Disputes," Royden J. Dangerfield; "The League and International Coöperation," Clark M. Eichelberger; "The Permanent Court of International Justice," C. D. Judd; "The International Labor Organization," William Lonsdale Tayler; "Our New Pan American Policy," Francis B. Sayre; "Historical Bases of Pan Americanism," Charles Wilson Hackett; "Economic and Social Aspects of Pan Americanism," George Wythe; "Basic Factors in Inter-American Peace," Alfred B. Thomas; "Is There an American International Law?," John P. Bullington; and "The Inter-American Peace Machinery," J. Lloyd Mecham. The careful student of international affairs will find little new or startling in these papers, although in most cases the speakers seem to have presented to their conference audiences the processes of world order and organization in their most favorable light. If these processes should fail to keep the peace, it certainly will be through no fault of the authors of these papers. In fact, one could well wish that the responsible officials of the governments of the nations might have as much confidence in the efficacy of the processes described as these learned speakers appear to have.—N. D. HOUGHTON.

Peace or War? (University of Minnesota Press, pp. 205), edited by Professor Harold S. Quigley, is one of the *Day and Hour Series*, and comprises eleven papers delivered at a conference on "Peace or War?" held at the University of Minnesota, April 7, 8, and 9, 1937. The papers and their authors are as follows: "National Ideals in Conflict," William Y. Elliott; "Needed: New Symbols of Peace," Peter H. Odegard; "Fallacies of Economic Nationalism," Benjamin B. Wallace; "Economic Bases of Peace," Alvin H. Hansen; "War is Not Inevitable," David Bryn-Jones; "1914 and 1937: Parallel or Contrast," Harold C. Deutsch; "China Within the Triangle," Harley Farnsworth MacNair; "America: A Nation in Arms?," William T. Stone; "A Call to Preparedness," Adam E. Potts;

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"Security Through Neutrality?," Edgar W. Turlington; and "The League in Crisis," Pitman B. Potter. In the apt words of the editor, "it would be difficult to find within so convenient a compass as this little book a clearer, saner, better informed, or more balanced discussion of the present international crisis." For the most part, the speakers have dealt in a thoroughly realistic fashion with the great forces and movements which present so great a challenge to the intelligence and courage of present-day peoples and their responsible officials. There is no dominant atmosphere of defeatism, yet the authors are willing to face squarely the various aspects of the current crisis, not minimizing the tremendous obstacles to peace and orderly processes.—N. D. HOUGHTON.

In increasing numbers, older dependencies as well as new ones born since the World War have become members of various international organizations, ranging from the League of Nations and the International Labor Office (in the case of India only) to the World Postal Union and others, totaling fifteen. They include such varying degrees of dependence as are represented by the Philippine Islands of today and Guam, Class A mandates and Korea, Tunis and the Dutch East Indies, and still others. After an examination of their legal status, Dr. Friedrich Apelt, in *Abhängige Mitglieder völkerrechtlicher Verbände; Ein Beitrag zur Lehre von der Rechtspersönlichkeit im Völkerrecht* (Brünn-Vienna-Leipzig: Verlag Rudolf M. Rohrer, pp. 211), expressly acknowledges as independent states, and therefore excludes from consideration in his study, San Marino, Monaco, the Free City of Danzig, Santo Domingo, Haiti, and Egypt since 1923. The author's detailed examination of treaties and of international practice shows that in international organizations dependencies are in many respects put on an equal basis with independent states in regard to seats, discussions, motions, and votes, often the person of the delegates representing them, and in rare cases even the ratification of treaties. Reasons given for granting independent membership to dependencies are the desire to recognize their administrative independence in certain fields; a concession, in effect, of multiple voting to certain powers; or, as in the case of India, considerations of development toward future national self-administration. However, there has been much opposition on the part of the United States and other major and minor powers to such independent and equal membership of dependencies. After careful consideration of the evidence, the author strongly asserts that international legal theory should take increasing cognizance of dependent members of international organizations as persons under international law. Dr. Apelt's comprehensive material is carefully assembled and documented, indexed, ably analyzed, and presented in a clear style. It should prove of considerable value to governments and students of inter-

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national law, organization, and diplomacy who have not always had access to knowledge concerning actual international practice along these lines. They will also be challenged by the theoretical considerations presented in the work. Thanks are due the Institut Universitaire de Hautes Études Internationales in Geneva, where the study originated, and which has made possible the publication of this important contribution.

JOHN BROWN MASON.

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Canadians "who are still prone to assume that [they] have invariably lost in [their] litigations with the United States and accordingly that no confidence in ultimate justice can be entertained when [their] interests come into conflict with" those of the Republic will find little to support those assumptions in *The Settlement of Canadian-American Disputes* (Yale University Press, pp. viii, 134), by their eminent fellow-countryman, P. E. Corbett, dean of the faculty of law at McGill University. And Americans who go blithely on their way in absent-minded disregard of the annoyances which they sometimes inflict upon their neighbors may advisedly take some thought from that record. In spite of the much-bruited 125 years of peace across 3,000 miles of unfortified frontier, there have been occasions of serious friction, sheer luck in some instances preventing resort to arms. Dean Corbett's monograph is a notable contribution to the series of studies on the relations of Canada and the United States now being prepared under the direction of the Carnegie Endowment for International Peace, and to the achievement of that peace itself. The jurist is refreshingly realistic, dispassionate in his utterance, and frank and even-handed in his criticism. In crisp, clear, and compact language he has set forth the principal facts, leading arguments, and important conclusions of each of the litigations between the United States and Canada. He has grouped the disputes topically. A chapter each is devoted to boundaries, fisheries, inland waterways, and miscellaneous claims. The record is neatly analyzed, from the St. Croix River boundary dispute arising out of the treaty of 1783 to the sinking of the *I'm Alone* and the *Trail Smelter* damages. The simplicity and directness of the analysis give the work exceptional value for layman, lawyer, and student alike. The 150 years of litigation are not barren of contributions to international law and procedure. These are considered in Chapter 6. Of immediate concern to the two governments should be the *lacunae* in the existing machinery for the settlement of disputes. These the author exposes in Chapter 7. He suggests (p. 121) an "all-in" arbitral agreement, providing for a new standing tribunal competent "to deal with all cases not clearly covered by one or another of our present arrangements." It is high time that such

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a tribunal be established, and it is to be hoped that the appropriate authorities of the two countries will take the suggestion under serious consideration.—HENRY REIFF.

To what extent had German interests penetrated the Moroccan sultanate by the eve of the Tangier incident? The question was hotly debated on both sides of the Rhine during the pre-war era; but, because of its ominous political implications, blind patriotism governed discussion and no satisfactory answer could be arrived at. Now, a generation later, when crowding events have made the matter one of mere academic concern, a young American scholar, in the calm detachment of another world and another age, has undertaken to solve the problem on the basis of impartial fact-finding. Francis T. Williamson's *Germany and Morocco Before 1905* (Johns Hopkins Press, pp. 210) reaches the interesting conclusion that the Teutonic foothold in Morocco was actually very slight, but that the country had come to possess tremendous symbolic importance in German eyes. While even German estimates of the number of Reich citizens resident in the sultanate run no higher than 184 and there were but 58 German firms doing business there at the time of William II's spectacular visit, the idea that national prestige would suffer an irreparable blow if Morocco were acquired by any other power was firmly implanted in the Teutonic mind. This proved as effective in stirring up anti-French sentiment as though heavy settlement had occurred and huge interests were at stake. The author supports his thesis by a vast array of documents and contemporary writings which yield convincing evidence. Statistical tables, eight detailed graphs, and a twenty-page bibliography add greatly to the value of his study. The book is, from every point of view, highly meritorious—a distinct contribution to the literature of modern imperialism.—LOWELL J. RAGATZ.

In *Hitler's Drive to the East* (E. P. Dutton and Co., pp. 130), F. Elwyn Jones describes the ruthless and systematic methods by which Germany is seeking to extend her economic and political influence over the states of southeastern Europe. Mr. Jones examines the motives back of this drive, together with the techniques involved, and estimates the danger to general European peace found in Germany's new *Drang nach Osten.* Individual chapters are devoted to the strategy and degree of Nazi penetration into Czechoslovakia, Greece, Rumania, Bulgaria, and Yugoslavia. The author's contribution lies not so much in the presentation of new material, for most of his facts can be found elsewhere, but rather in summarizing accurately and clearly this vital problem of European diplomacy.—WINCHESTER H. HEICHER.

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POLITICAL THEORY AND MISCELLANEOUS

What is Ahead of Us? (Macmillan Co., pp. 192) presents the following series of Fabian Lectures: "Can Capitalism Survive?," G. D. H. Cole; "Economic Nationalism: Can it Continue?," Sir Arthur Salter; "Dictatorships: What Next?," Wickham Steed; "The Future of Soviet Communism," Sidney Webb; "The Next War: Can it be Avoided?," P. M. S. Blackett; and "Planning for Human Survival," Lancelot Hogben. These brilliant liberal writers survey the perilous state of mankind and give a gloomy picture of its prospects. Cole warns that capitalism exhibits capacity for survival despite its economic contradictions and dislocations. Salter deplores the success achieved in reconstructing, after 1919, a tolerable world system on foundations too weak to withstand post-war strains. As for dictatorships—fascist-style—Steed and Blackett urge the necessity of a united front of all anti-fascist states, ready to employ force, if necessary, to stop the fascist-nazi advance. These two agree with Cole that a union of liberal forces must be effected in England in order to pull down the Conservative government and to ensure England's taking such a strong moral position against fascism as to attract the Dominions, the United States, and the smaller democratic states. Webb continues to have faith in the U.S.S.R. as the land of hope in a world staggering towards catastrophe. Finally, Hogben supports the thesis that, if present trends continue, it is merely a question of the manner of the disappearance of the race, whether in the unspeakable horrors of war or slowly and respectably, amid the bric-a-brac, gadgets, and distractions that people at peace choose to pay for in lieu of parenthood. He urges a more radical critique of the social values imposed by capitalism. The lectures are penetrating and challenging, although they may leave many readers with the fear that these outstanding liberals can but reflect upon, not assume intellectual guidance of, the new and violent energies tearing about in the world.—CHARLES A. TIMM.

Holding that "the writer who gives the people revolutionary legends is as criminal as a cartographer who gives seamen faked charts," Frank Jellinek, an avowed Marxist, in *The Paris Commune, 1871* (Oxford University Press, pp. 447), presents a detailed, scholarly study of that event. He shows that this uprising, composed as it was of many elements—national guard workmen, bourgeois radicals, revolutionary intellectuals, members of the First International—inspired by neo-Jacobinism, burst out spontaneously when the Provisional Government attempted to seize the guns of the national guards of Paris, guns which had been purchased in many cases by them through private subscription to defend their city during its siege by the Germans, guns they looked on not only as protection against this alien enemy still camped at their gates, but also

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against the apparent intention of the Bordeaux Assembly to act against the interests of the French people. Thiers deliberately goaded on the more extreme democrats of the capital into a position where he could destroy them in the interests of the conservative republic he was determined to set up. The bewildered popular leaders were pushed forward from one move to another until they found themselves setting up a government with all the responsibility that it entailed. The cry was to defend *La Patrie en danger;* no thought of a communist state, but rather of a so-called federalism. The narrative carries us in the author's spirited style through the endless discussion of theory and policy by the communards and the tragic details of the second siege, culminating in the loss of twice as many lives as in the years of the Terror of the French Revolution. The confused hand-to-hand fighting of that last week in the streets of the various "sections" of the city, the author manages after a fashion to weave into a dramatic unity. He is helped in this by maps of Paris and its environs in 1871. Thiers accomplished his end. The extreme democrats were silenced for years to come, and the conservative republic was placed on a firm foundation, to the glory of this aged historian and ambitious elder statesman. However, Jellinek holds that in the French capital, as in the Commune of the Asturias in 1934, "heroic defeat was more fertile for future victory of the working class than could have been partial success." In spite of its obvious bias, this work is no doubt the best study of the Paris Commune that we have in English.—EDITH C. BRAMHALL.

A mildly conservative case-book exposition of the difficulties encountered in the establishment of harmonious relationships between employer and employee is to be found in Herman Feldman's *Problems in Labor Relations* (Macmillan Co., pp. xxiii, 353). The cases are stated so simply that the layman and the beginning student can readily understand them. Without offering any "answers" or "solutions," the reader's attention is directed to the effects of the depression upon labor relations, the conflicting interests of consumer and producer, the relationship between wage increases and commodity prices, the relative contributions of management and labor to the success of business enterprise, sectional competition, wage differentials based upon race and sex, the factors involved in unemployment insurance, the question as to whether employee organization, if any, should take the form of company, craft, or industrial unions, and other vital social and industrial issues. The material seems to have been selected with a slight, although possibly unintentional, anti-labor bias. For example, there are more cases which tend to show the dilemma of the generous employer who takes care of his employees during depressions, the problems involved in dealing with dishonest, inefficient, and malingering employees, the irresponsible nature of labor unions, and

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the losses resulting from strikes called for petty reasons, than there are which portray the plight of the laborer in unorganized and sweated industries, the consequences of long hours, poor wages, periodical unemployment, and the dismissal of faithful employees in middle age. The point of view reflected is primarily that of management, and only incidentally that of labor. The book will probably find more favor with the personnel administrator than with either the labor organizer or the objective student who is seeking to understand the conflict now raging between the workingman and his boss. A useful list of references is appended.—ROGER V. SHUMATE.

The thesis of Professor Malcolm Keir's *Labor's Search for More* (Ronald Press, pp. xii, 527) is that the major objective of the American labor movement is "more." The study surveys American labor and farmer movements during the past forty years to ascertain what the ordinary people have sought, how they tried to achieve their purposes, and what objectives are before them now. Unions, strikes, radical movements, the Non-Partisan League, the struggles of Southern factory and farm hands, miners, and lumbermen pass in rapid review. The accomplishments and vicissitudes of labor legislation, the more important court decisions affecting labor, and the political activities of labor unions are analyzed. There is a certain unbalance in the work, evidenced, for instance, by the disproportionate attention given such a minor matter as the Sacco-Vanzetti trials and a tendency to play up sensational incidents rather than to follow through carefully the basic trends of labor history. The book was written for the general public rather than a university classroom and furnishes a large amount of specific information for persons not previously familiar with labor history.—DON D. LESCOHIER.

Although Jacques Lambert, in *La Mise en Oeuvre judiciaire du Droit naturel aux États-Unis et le Maintien de l'Unité nationale dans un Régime décentralisé* (Lyon: Bosc Frères M. and L. Riou, pp. 48) considers several aspects of the government of judges, its most striking manifestation appears in the creation of a "super-constitution" in the natural law tradition from common law materials. In judicial review under "due process," and in the free construction of statutes, the Supreme Court has established a natural law which has come to pervade the jurisprudence of the states. As a consequence, a single juridical ideal exists, attainable through such diverse means as the judiciary allows. Lambert denies that judges tend to be subjectively arbitrary in the determination of "due process." Traditions of American common law provide its substance. Likewise, no criticism should be directed against judicial conservatism, for changes occur, slowly indeed, but effectively, as judges are exposed to new situations. And despite the subordination of the legislature, the judiciary accurately reflects the temper of America. Compared with government

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by legislature, Lambert concludes, the government of judges does not suffer.—E. S. WENGERT.

A composite volume surveying the whole field of the social sciences is offered in *Man and Society* (Prentice-Hall, pp. 805), edited by Emerson P. Schmidt, of the University of Minnesota. The book is designed to serve as a text in social science orientation courses and presents each specific field in the words and from the viewpoint of a teacher of the subject. Of the sixteen chapters, six are devoted to sociology, four to economics, three to government, and one each to history, geography, and psychology. The group of thirteen authors is made up of eleven from the University of Minnesota (Messrs. Schmidt, Monachesi, Wallis, Longstaff, Vold, Steefel, Hartshorne, Kirkpatrick, Starr, Kozelka, and Miss Shaw), Hertzler of the University of Nebraska, and Blumer of the University of Chicago. In each instance, the subject matter, scope, methods, and substantive elements of the particular field are presented, e.g., in regard to political science—sovereignty, law, political theory, classification of governments, international organization, electoral processes, political parties, citizenship, and the machinery of government.—H. R. BRUCE.

In *The Road to Reunion, 1865–1900* (Little, Brown and Company, pp. 307), by Paul H. Buck, the reader finds a small book treating a large subject. The thirteen chapters are couched in terms appropriate to the poetic standards of the manuscript. For a book on the South after the war, it is well balanced. For a book on the Nation after the war, it leaves much to be desired. The author's thesis is that the Civil War was the culminating stage in the creation of the chasm of disunion; that this chasm, widened and deepened by war events, had to be bridged before reunion could be realized; and that the series of attempts at bridging the gap constitute the vital events of the period. The title suggests a wide field of operation, but in that respect the book is disappointing. The author would have one believe that the principle of states' rights was exclusively Southern in acceptance and that all other sections were uniformly nationalist in thought and in deed, before and after the war. As a book on a section in process of change, it should satisfy the demands of scholars for accuracy of quotation and of Southern publicists for sympathetic appreciation. The last chapter concludes that reunion through reconciliation was accomplished by 1900, that the chasm was bridged, that full understanding was established. To the student of government, aware of the political impotency of the Southern Negro in contrast with political equality elsewhere and convinced that a chief cause of disunion was the difference of opinion on the growing sentiment that a democracy must be based upon a free and active people, this conclusion of the author seems somewhat premature.—GEORGE C. ROBINSON.

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RECENT PUBLICATIONS OF POLITICAL INTEREST
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CLYDE F. SNIDER

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AMERICAN GOVERNMENT AND PUBLIC LAW

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